TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 264 1902. 23

ANNIE ANDREWS, PLAINTIFF IN ERROR,

vs.

KATE H. ANDREWS.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

FILED JULY 28, 1902.

(17,842.)

(17,849.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 364.

ANNIE ANDREWS, PLAINTIFF IN ERROR,

vs.

KATE H. ANDREWS.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

INDEX.

	Original.	Print.
Writ of error	1	1
Return thereon	2	2
Caption to record	3	2
Petition	5	2
Decree of probate court	7	3
Appeal	9	3
Objections to decree	11	4
Answer	13	5
Decree of supreme judicial court	14	5
Bill of exceptions	15	5
Objections to decree	15	6
Answer	16	6
Testimony of Elizabeth M. Andrews	16	6
Laws of Dakota	19	9
Testimony of Annie Andrews	19	9
Robert M. Morse	22	12
M. F. Dickinson, Jr.	25	14
E. P. White	27	16

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 25, 1901.

	Original.	Print
Testimony of Daniel B. Getty	28	17
James L. Robbins	29	18
Wm. H. Stoddard	29	18
George W. Lowry	31	19
Joseph L. Glover	32	21
George P. Nock	35	23
Curtis H. Winsor	36	24
James P. Wade	37	25
George H. Andrews	38	26
Kate H. Andrews	38	26
Richard C. Wheelwright	41	28
Con Hudson	41	29
Appellee's requests to rule	43	31
Findings of fact	44	31
Request for extension of time to file exceptions	46	33
Exhibit 3, W. R.—Certificate from Boston Herald Company, September 1, 1891	46	34
Exhibit 4—Record from circuit court of Minnehaha county, South Dakota	47	34
Clerk's certificate	47	35
Summons	48	35
Complaint	49	36
Affidavit of Charles S. Andrews	50	37
Complaint	51	38
Order of publication	53	40
Summons	53	40
Notice of retainer for defendant	54	41
Affidavit of H. H. Keith	55	42
Order to show cause	57	44
Answer	58	45
Affidavit of Kate H. Andrews	64	50
H. H. Keith	66	52
Charles S. Andrews	67	53
Charles H. Andrews	69	55
Blanche Andrews	71	58
George H. Andrews	72	59
Order on motion for support, &c.	73	60
Receipts	74	60
Withdrawal of appearance for defendant	74	61
Findings	75	61
Decree	76	62
Exhibit 5, W. R.—Certificate from Boston Herald Company, June 24, 1893	77	63
6, W. R.—Agreement of November 18, 1890	77	63
7, W. R.—Authority to settle, April 22, 1892	78	64
9, W. R.—Letter of Kate Henshaw Andrews to Mr. Andrews	78	64
8—Envelope addressed to Mr. Charles H. Andrews	80	66
Record of probate court of Suffolk county in the matter of the separate support of Kate H. Andrews	80	66
Certificates	80	66
Petition	80	67
Order for notice	82	67

	Original.	Print
Service of petition and order	82	68
Decree	83	69
Claim of appeal	84	70
Reasons of appeal	85	70
Decree of December 12, 1890	86	71
Exhibit A, F. R. S.—Registry list	87	72
B, F R. S.—Record of election	88	72
Rescript	90	73
Appearance for Annie Andrews	92	74
Final decree	94	74
Authentication of record	95	74
Assignment of errors	96	75
Certificate of reporter	97	75
Opinion	98	75
Citation and service	99	78
Final certificate	101	79
Bond on writ of error	103	79

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the supreme judicial court of the Commonwealth of Massachusetts, holden at Boston, within and for the county of Suffolk, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court, before you or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between Kate H. Andrews, appellant, and Annie Andrews, appellee, in a petition for administration, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Annie Andrews, appellee, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the fourth day of August next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the sixth day of July, in the year of our Lord one thousand nine hundred.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—
OLIVER WENDELL HOLMES,
Chief Justice ~~Clerk for the~~ *Supreme Judicial Court.*

2 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

And now, here, the judges of the supreme judicial court of the Commonwealth of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said supreme judicial court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John Noble, clerk of said supreme judicial court within and for the said county of Suffolk, have hereto set my hand and the seal of said court this nineteenth day of July, A. D. 1900.

[SEAL.] JOHN NOBLE, *Clerk.*

3 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

To all persons to whom these presents shall come, Greeting:

Know ye that among the records of our supreme judicial court, sitting at Boston, in said county of Suffolk, for the hearing of all causes, matters, and things cognizable by a supreme court of probate, between the first day of January, in the year nineteen hundred, and the thirty-first day of December, in the same year, both inclusive, it is thus contained, the following being the entire record in the case:

4 6084. Annie Andrews, of said Boston, administratrix of the estate of Charles S. Andrews, late of said Boston, deceased, appellee, against Kate H. Andrews, of Washington, in the District of Columbia, widow of said Charles S. Andrews, appellant from a decree of the judge of probate, at a probate court holden at said Boston, within and for said county of Suffolk, on the fourteenth day of October, A. D. 1897, upon the following petition, to wit:

5 *Petition.*

To the honorable the judge of the probate court in and for the county of Suffolk:

Respectfully represents Annie Andrews, of Boston, in said county, that Charles S. Andrews, who last dwelt in said Boston, died on the 7th day of October, in the year of our Lord one thousand eight hundred and ninety-seven, intestate, possessed of goods and estate remaining to be administered, leaving as widow, his only heirs-at-law, and next of kin the persons whose names, residences, and relationship to the deceased are as follows, viz:

Name.	Residence.	Relationship.
Annie Andrews.....	Boston.....	Widow.
Charles H. Andrews.....	"	Son (minor).
Pauleta Andrews.....	"	Daughter (minor).

That your petitioner is his widow.

Wherefore your petitioner prays that she, or some other suitable person, be appointed administratrix of the estate of said deceased, and certifies that the statements herein contained are true to the best of her knowledge and belief.

Dated this 14th day of October, A. D. 1897.

ANNIE ANDREWS.

SUFFOLK, *ss:*

Subscribed and sworn to this 14th day of October, A. D. 1897.
Before me—

ELBRIDGE R. ANDERSON,
Justice of the Peace.

The undersigned, being all the persons interested residing in the Commonwealth who are of full age and legal capacity, hereby assent to the foregoing petition.

CHARLES H. ANDREWS.
PAULETA ANDREWS.
ANNIE ANDREWS,
Their Guardian.

6 Upon which petition it was ordered and decreed by said probate court as follows, to wit:

7 COMMONWEALTH OF MASSACHUSETTS, } *ss:*
Suffolk, }

At a probate court holden at Boston, in and for said county of Suffolk, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

The petition of Annie Andrews, of Boston, in said county, praying that she, or some other suitable person, be appointed administratrix of the estate of Charles S. Andrews, late of Boston, in said county of Suffolk, deceased, intestate, having been considered, and it appearing that the petitioner is the widow of said deceased, and that the next of kin are minors—

It is decreed that said petitioner be appointed administratrix of said estate, first giving bond, with sufficient sureties, for the due performance of said trust.

ROBERT GRANT,
Judge of Probate Court.

8 From which decree said appellant appealed to this court, being the supreme court of probate for said Commonwealth, in the words following, to wit:

9 To the honorable the judge of the probate court in and for the county of Suffolk:

Represents Kate H. Andrews, now of Washington, in the District of Columbia, that she is the widow of Charles S. Andrews, late of Boston, in the county of Suffolk, deceased, and is interested in the

estate of said deceased; that she is aggrieved by a decree of the probate court held at Boston, in said county of Suffolk, on the fourteenth day of October, A. D. 1897, whereby said court appointed Annie Andrews as the administratrix of the estate of said Charles S. Andrews.

And she hereby gives notice that she claim- an appeal from said decree to the supreme judicial court.

Dated this 4th day of November, A. D., 1897.

KATE H. ANDREWS,
By FRANK D. ALLEN,
Her Attorney.

Filed Nov. 5, 1897.

10 And said appellant entered her said appeal in the clerk's office of said court on the ninth day of November, A. D. 1897; and thereupon the appellant appeared by her attorneys, A. Hemenway and F. D. Allen, Esquires.

And the appellant filed in this court the following objections, to said decree, to wit:

11 SUFFOLK, ss:

Supreme Judicial Court.

KATE H. ANDREWS, Appellant,
vs.
ANNIE ANDREWS, Administratrix Estate of Charles S. Andrews.

Objection to Decree.

And now comes Kate H. Andrews, the appellant in the above-entitled cause, and says that she objects to the decree of the probate court made in said suit for the following reason:

Because the statement of the appellee, said Annie Andrews, in her petition to the probate court for administration of the estate of said Charles S. Andrews, that she is the widow of said Charles S. Andrews is not true, as the appellant at the time of the death of said Charles S. Andrews was his only lawful wife and is now his widow.

KATE H. ANDREWS,
By FRANK D. ALLEN,
Her Attorney.

Suffolk, ss: Supreme judicial court. Filed Nov. 9, 1897.

12 And on the fifteenth day of December, A. D. 1897, the appellee appeared by her attorneys, Bartlett and Anderson, Esquires.

And on the nineteenth day of January, A. D. 1899, the appellee filed an answer to the claim of appeal as follows, to wit:

13 SUFFOLK, *ss*:

Supreme Judicial Court.

ANDREWS
v.
ANDREWS.

Answer to Claim of Kate H. Andrews.

And now comes Annie Andrews, the petitioner, and denies that the said Kate is a person interested in the estate of said Charles S. Andrews, deceased, and denies that said Kate is the widow of said Charles S. Andrews, and says that she has no right in law to prosecute this appeal and this court has no jurisdiction to entertain, hear, or determine the same.

ANNIE ANDREWS,
By her att'ys, BARTLETT & ANDERSON.

14 Whereupon a hearing was had, and on the sixth day of February, A. D. 1899, the following decree was entered by the court, to wit: Decree of probate court reversed.

Whereupon the appellee, by her attorney, alleged sundry exceptions to the ruling and opinion of the court in certain matters of law, and the same, being reduced to writing and presented to the court and found conformable to the truth, were allowed and signed by the presiding justice as follows, to wit:

15 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court, Suffolk County. In Probate.

ANNIE ANDREWS, Administratrix,
v.
KATE H. ANDREWS, Appellant.

Appellee's Bill of Exceptions.

This was an appeal from the appointment of Annie Andrews as administratrix of the estate of Charles S. Andrews from the probate court for the county of Suffolk and Commonwealth aforesaid.

Annie Andrews filed her petition in the said probate court upon the 14th day of October, 1897, and in said petition set forth that she was the widow of the said Charles S. Andrews, and that there had been born to her and the said Charles S. Andrews two children, minors, whose names hereinafter appear. And the said appellee claimed the right to the appointment as such administratrix as such widow. On the 14th day of October aforesaid, the probate court, by its decree, appointed the said Annie Andrews as such administratrix. On the 5th day of November, 1897, the appellant, Kate H. Andrews, claimed an appeal from said probate court to the supreme judicial court, and filed objections to the said decree and entered her appeal in the said supreme judicial court. The objections to the decree filed by the appellant were as follows:—

"*Objections to Decree.*

Supreme Judicial Court, Suffolk, ss.

KATE H. ANDREWS, Appellant,
vs.
ANNIE ANDREWS, Administratrix Estate of Charles S. Andrews.

And now comes Kate H. Andrews, the appellant in the above-entitled cause, and says that she objects to the decree of the probate court made in said suit for the following reasons:—

16 Because the statement of the appellee, said Annie Andrews, in her petition to the probate court for the administration of the estate of said Charles S. Andrews that she is the widow of said Charles S. Andrews, is not true, as the appellant at the time of the death of said Charles S. Andrews was his only lawful wife and is now his widow.

KATE H. ANDREWS,
By FRANK D. ALLEN,
Her Attorney."

The said objections to decree were filed on November 9, 1897. To the objections to decree the appellee filed an answer, which was as follows:—

"*Answer to Claim of Kate H. Andrews.*

SUFFOLK, *ss:*

Supreme Judicial Court.

ANDREWS
v.
ANDREWS.

And now comes Annie Andrews, the petitioner, and denies that the said Kate is a person interested in the estate of said Charles S. Andrews, deceased, and denies that the said Kate is the widow of said Charles S. Andrews, and says that she has no right in law to prosecute this appeal, and this court has no jurisdiction to entertain, hear, or determine the same."

The answer was signed "Annie Andrews, by her attorneys, Bartlett & Anderson."

Thereafter the case came on, and was heard before a justice of this court; and all of the evidence material to the questions raised by this bill of exceptions is as follows:—

ELIZABETH M. ANDREWS, a witness called by the appellee, testified as follows:

"My full name is Elizabeth M. Andrews. I reside in Boston. I am a sister of Annie Andrews. In 1893 I was present at the marriage of my sister Annie to Charles S. Andrews. They were married in Boston by the Rev. Mr. Horton. The marriage took place

at my mother's home on Marlborough street. After they were married they went on a short wedding trip for two or three days, and then they returned because Mr. Andrews was ill, and lived in Boston. They took an apartment on Massachusetts avenue. After that they lived in various places here in Boston, and during the summers they spent with us at the house of Charles H. Andrews, Sr.; I was living with my father-in-law, Charles H. Andrews. My husband was Edward J. Andrews, a brother of Charles S. Andrews.

I was present in the house at the time of the birth of
17 the oldest child mentioned in this probate petition. It was October 17, 1893. The child was born in Boston. That child's name was Charles H. Andrews, and he was named for his grandfather. My sister and Charles S. Andrews were at the time living on Massachusetts avenue. Their second child was born on Gloucester street in Boston on October 8th, 1894; its name was Paulita. After the marriage of Mr. Andrews to my sister, and after the time of their return from this wedding trip, he was not well at all. He was confined to the house more or less; he went to business part of the day. During the time that I was living at the house of the grandfather, Charles H. Andrews, I had known Kate H. Andrews. I knew her from the time she married Charles S. until they separated. After the marriage of my sister to Charles S. Andrews I saw something of Kate H. Andrews; I used to meet her in Boston. I couldn't tell how often she was in Boston, because she was at her house, I suppose. I met her in the summer mostly. At those times I had no talk with her. I heard her make a statement once to a lady about the marriage of my sister; she was in a car when my father-in-law and my husband and myself got into the car. She told her friend who we were, and said that my sister was married to her ex-husband, or whatever term she used, and that it was a very funny combination. That was in the summer of 1894, after the birth of the first child. From 1893, time of the marriage to my sister, down to the death of Charles H. Andrews, I saw her more than four or five times. I had no dealings with her, and no conversation with her other than that that I have stated. The date of the marriage of Charles S. Andrews to my sister was January 11, 1893. Both my sister and myself were daughters of Andrew Paul. I am familiar with my sister's handwriting, and that is her signature to the probate petition for the appointment of administratrix."

Paper passed to witness introduced in evidence, and marked "Exhibit 1, R. H. J."

On cross-examination the witness testified:

"I have known Kate H. Andrews from the time she married Charles S. Andrews, April 13, 1887, in Boston. They were married in St. Paul's church, I think; quite a wedding. After they were married in St. Paul's church I think they went abroad for a while. I don't remember just how long, but it was several months. When they returned they came to our house in Lynn, on Ocean street, No. 26. They remained there just a few weeks. I think they came there in July, but I am not sure. It was either July or the first of August, 1887. From there I think they went to Narragansett

Pier; I don't know how long they stayed there. In that fall they went into their house, 381 Commonwealth avenue. I don't
18 know how long they remained there. I did not go there. At this time Charles S. Andrews' business was speculating, I guess. There was a child born to Charles S. and Kate H. Andrews in the fall of 1888, I think. I knew of Charles S. Andrews leaving Boston after they went to housekeeping at 381 Commonwealth avenue. They went away in the summer time, and I think they went to Europe on a trip after that. After he returned to our house they had separated, and after he came to our house to live then he travelled out West. He started off to travel in different places and the next thing I knew he was in Dakota. He started off on a travelling excursion for his health, and because he said he had nothing here to live for; he had lost everything, and he wanted to start out anew in life. He returned the latter part of the summer of 1892, I think, just before his sister was married. He went away in the summer of 1891, and immediately on his return he came to our house. He did not say anything to me about what he had been doing; I had no conversation with him, and heard him say nothing as to his western trip. He came back and told me that he had his divorce from Kate H. Andrews. That was when he returned in the latter part of the summer of 1892. I knew they hadn't been living happily together, but I was not intimate enough with Mrs. Charles S. Andrews to know anything about them. I heard rumors to the effect that they were not living happily together, but I knew nothing about it myself. After he said that he had got a divorce from Kate H. Andrews he said he was going back out West again. He came on to visit us in the summer, and he was going back out West again, and he waited for his sister's wedding, which was in November. My sister met Charles S. Andrews when I was a little girl, when I first knew the Andrewses, I guess, just before I was married, and then she didn't see him for a good many years. I was married in 1887, and my sister had met him, I think, the summer before. He commenced paying attention to my sister after he returned from Dakota. He had not called on her before that, and had never seen her before that to my knowledge. When he came back from Dakota he did a little business on the 'Herald;' that was continuous up to the time of his death. I don't think I can tell you what salary he got on the 'Herald.' When he came back he came to our house, 26 Ocean street, and stayed there right along until he married my sister. My sister was not living there at the same time; she was living with her mother in Boston."

On redirect examination the witness testified:

"I was married in January, 1887, and after that, in July, I went to live at my father's house. I think my sister had just met Charles S. Andrews, just previous to our marriage; they met at my house when Charles S. Andrews came to my house. She may have met him before he went West that time, because she used to
19 come to see me and he was there, but that is all I know about the meetings at Charles H. Andrews' house."

Next the appellee offered the laws of the Territory of Dakota which

were in force in 1887, and which afterwards became, by enactment of 1890, at the time the Territory was admitted into the Union, the laws of the State of South Dakota, and which were the laws of the State of South Dakota in 1890, 1891, and 1892, and the sections of the Civil Code of the Compiled Laws of Dakota, sections 2558 to 2575, inclusive, which were admitted in evidence.

Next the libellee offered in evidence the laws of the State of South Dakota, chapter 105 of the Session Laws of 1890.

SEC. 1. The preamble of the act is, "An act re-enacting the laws of the Territory of Dakota, and declaring the common law in force. Be it enacted by the legislature of the State of South Dakota."

SEC. 1. (Re-enactment.) "All laws, in force in the Territory of Dakota at the date of the admission of the State of South Dakota into the Union and not repugnant to, or inconsistent with the constitution of said State, shall continue and be in full force and effect until altered, amended or repealed."

SEC. 2. "In any and all cases not controlled by the laws enumerated in sec. 1 hereof the common law shall be the law of this State."

SEC. 3. "Whereas no law is now in force providing for the re-enacting of the laws of Dakota Territory and declaring the common law in force, therefore an emergency exists, and this law shall be in force from and after its passage and approval. Approved February 6, 1890."

And the evidence so offered was admitted.

Next the appellee offered in evidence the record of the circuit court of the State of South Dakota, county of Minnehaha, in the case of Andrews *v.* Andrews, and the same was admitted in evidence, and is annexed to this bill of exceptions, and marked "Exhibit 4."

ANNIE ANDREWS, the appellee, testified in her own behalf as follows:—

"My name is Annie Andrews. I live at present in Lynn. I have lived there the last two years. I am the petitioner to the probate court for my appointment as administratrix of the estate of Charles S. Andrews. I was married to Charles S. Andrews on the 11th day of January, 1893. I was introduced to Charles S. Andrews in the summer of 1886, at my father's home, when he called upon my sister. That was in Boston. After 1886 I never saw him to speak to until he returned to his father's house early in 1890. I became intimately acquainted with him after he returned from Dakota. Before he went to Dakota, I saw him at his father's house, and that is all. At one time I heard him say, while living at his father's house, that he was going to leave Boston, either to make a trip around the world, or he was going to leave Boston altogether, as he had lost his home and everything, and was going away. He said he had lost everything that he had to live for in Boston, and he was going to leave the city. I remember that that conversation took place in the early part of 1890. After May, 1892, the first time that I saw him was round the 4th of July, 1892. That is the first time that I re-

member seeing him after 1890, and that was after he returned from Sioux Falls. After he returned, he said he liked Sioux Falls, South Dakota, and he intended to return there. I became engaged to him on the 2d of November, 1892, the day of his sister's wedding. At the time of his proposal for marriage to me, he said he wished to make South Dakota his home, and he asked me to go there with him, as he liked the country. He also said that he had been out there and lived there, and liked the place, and wished to make it his home; he didn't care to stay in Boston, and asked me if I was willing to go there and live, and I said yes. He was poor in health when I married him in January, 1893, and his father did not think it wise for us to start. He told me that he came to Boston to be present at his sister's wedding in November, 1892. He said he was making a visit to his father's for the summer at Swampscott. The reason that we did not go to Dakota was because he was too ill to go, and I was ill for the next two years, and death came into our family, and he didn't improve in health, but grew weaker until his father's and his own death. His sister Blanche died in October, 1893. After the time that we were married, we lived on Massachusetts avenue in the city of Boston, and I lived with him continually until he died. We were married in Boston. He died at Lynn. There were two children born of this marriage. They are the ones named in this petition. The first one was born October 17, 1893, the second was born October 8, 1894. After the time that I married Mr. Andrews he did a little work on the 'Boston Herald.' His father was one of the proprietors of the 'Herald.' He kept that work up regularly until his health failed in 1897. He was in poor health all the way up to 1897, when he commenced to fail rapidly. I knew that he was the correspondent for the 'Boston Herald' in South Dakota, and that was from what he told me. I do not know personally anything about any work that he did while out there. I know Mr. Whiting, the clerk of the proprietors of the 'Boston Herald.' I know his signature."

Witness was handed card dated "Herald office, Boston, September 1, 1891," signed "Whiting, clerk," and she identified the signature on the same as Whiting's handwriting. The card was marked "Exhibit 3," and admitted in evidence, and is hereto annexed.

21 Also card dated "Herald office, Boston, June 24, 1893," signed "Whiting," was offered, admitted in evidence, and marked "Exhibit 5," and is hereto annexed.

"At the time that we were married we took a trip away for just two days, for he was ill, too ill to stay away from the city of Boston, and we were obliged to return. My husband died of consumption."

Upon cross-examination the witness testified as follows:

"I was first introduced to C. S. Andrews in 1886, at my father's home on West Newton street in Boston, as he was calling upon my sister. I never saw him until the early spring of 1890 again to speak with, when he returned to his father's home. I remember seeing him at his father's house in the early part of 1890. The second time I saw him was in the early part of 1890. I never had any talk with him about his wife having obtained a decree for separate

support against him. He did not mention it at that time—not early in 1890. When he returned from Sioux Falls, Dakota, in 1892, he spoke about himself having an absolute divorce from Kate. * * * I never had any conversation with him about his wife Kate Andrews, in 1890, having obtained any decree against him in the probate court here, but in 1892, he said he had got a divorce from his wife Kate Andrews. He told me that in the summer of 1892 after he returned. I remember seeing him around the 4th of July, 1892, at his father's house in Lynn. I do not know that he returned prior to that. I had not seen him. I had not heard that he had been back some two months. I know that he returned with his father, but just the date I don't remember, because I didn't see him till the early summer, around July. He did not tell me when he got back. I never learned just the date when he got back. I did not hear from anybody that he came back in May or June prior to that. He was down at his father's house in Lynn for the summer. I did not stop at that house; I was at the Ocean house in Swampscott for the summer. Of course I was over at the house more or less during the summer; my sister there, she made her home with Father Andrews. During the summer of 1892 I saw C. S. more or less. At that time he was not engaged in any business here in Boston. At the time he told me that he got a divorce from Kate Andrews, all that he said was that he had an absolute divorce from Kate H. Andrews. He never gave any experiences that he had out in South Dakota to me; he never spoke of any of his affairs out there, and I don't know anything about any of his affairs when he was there. I never heard him talk to anybody about his affairs out there, and I never asked him about them. I did not know he was going out there. I knew
22 he was out West. I did not correspond with him. I knew he was out there in 1891 and 1892, from hearing his father speak of it. I don't remember just the year he left to go out there. I remember he was not in Swampscott in the summer of 1891. I knew he was out West. I didn't know where he was out West until I heard his father speak of it later, that he was in Sioux Falls, South Dakota. His father never said anything to me about his being out there trying to get a divorce. His sister married on the 2d of November, 1892, and I became engaged to him on that day, and I married him. He did not begin to be attentive to me as soon as he came back from the West, but I saw him more or less through the summer at Swampscott. We lived after marriage on Massachusetts avenue, Boston. I think he did a little work on the 'Herald' when I married him. I do not know what sort of work it was. He worked in the office until his health failed, and then he did his work at home. I don't know what you would call his work that he did at home. I know he had all the papers, and had to go through them and examine them, and put headings on them, and send them down. He used the scissors some. He had several different positions in the office. He changed from one thing to another—I don't know just the nature. It was in 1894 that he began to be off and on at the office. After 1894 he did some work for the office. He was some days at the office and some days at home doing his work,

but in 1896 I remember him more at home. In the summer of 1897, before his last sickness, he ceased to go to the office, and then he gave up entirely."

ROBERT M. MORSE, called as a witness for the appellee, testified as follows:

"I was counsel in the proceedings for separate support between Kate H. Andrews and Charles S. Andrews. I was asked the other day to look at my books and refresh my memory as to the dates, and having done so I can state that the proceedings in the probate court were in the early summer of 1891. Upon reflection, I am mistaken in regard to that; those proceedings were in the early summer of 1890."

The certified record of the proceedings in the separate-support case in the early summer of 1890 were offered by the appellee and were admitted in evidence, and are hereto annexed.

"There was an arrangement entered into between Mr. Peabody and myself in reference to the disposition of this separate-support matter."

The paper hereto annexed and marked "Exhibit 6," dated Boston, November 18, 1890, was handed to the witness, who testified:

"I recognize that paper before me as the memorandum of that settlement. The signature, or at least the handwriting of the initials, is mine."

23 The paper was offered in evidence and admitted, and marked "Exhibit 6."

"After this decree was entered into there was as matter of fact conveyances made in reference to the curtesy. The conveyance was really made to Mr. Morton in my office, in trust. I do not remember whether there were any other papers drawn, any papers relating to the personal property. There is no doubt that my client Kate H. Andrews, received from Mr. Peabody, or from the representatives of Mr. C. S. Andrews, all that property. In the course of investigation I did not find any other property that belonged to C. S. Andrews other than is conveyed in this paper here. The contest in the probate court was a spirited one, and went on at some length. I did not appear in any proceeding in Dakota for my client, nor instruct any counsel or assume any management in regard to any proceedings in Dakota. I was informed of the fact that proceedings had been brought in Dakota for divorce, and I had some correspondence with Mrs. Andrews on the subject, and some correspondence with Mr. Bartlett, representing Mr. Andrews. After the commencement of those proceedings in Dakota for and in behalf of Mrs. Kate H. Andrews I received the sum of $750, of *of* which about $250 covered the cash expenses in the proceedings in the probate court, and the rest of which was applied to the payment of the amount due me for services, but I am not able at this distance of time, without looking at the papers—and I have not had an opportunity to look at my check book, where there would be a memorandum—to state much further about it. I do not think that any agreement was executed in regard to it. I do not remember Mr

Dickinson in any way in the matter. I had nothing to do with taking depositions. As to where the $750 came from, and what it was for, I do not want to state positively. If I may say this, my best recollection is that I was advised that no opposition would be made to the granting of a divorce in the Dakota proceedings, but I should be very unwilling to say that that was at that time or in consideration of it. I think that it was the understanding that all the matters between the parties were settled at that time, and that this paper was made either in whole or in part as the consideration for the payment of that $750, but I should reserve the right to withdraw that statement if any papers in existence are inconsistent with it. My recollection is that there was something of that kind. I will say this: I looked at the memorandum book of my own services, and did not find anything on that book subsequent to the latter part of 1891, possibly the spring of 1892, and I do not think there is anything else which would help my memory, except possibly on consulting my check book, or in my cash book there might be a memorandum throwing some light on the matter. I have looked over my letter books. There is nothing. I have had copies made, and these are before me, of all the letters written by myself
24 to Mr. Bartlett, and of a letter written by myself to Mrs. Andrews, and these cover all of the correspondence between the 28th of November, 1891, and the 25th of March, 1892.

"As to whether the memorandum, Exhibit 6, produced by me, had anything to do with the Dakota proceedings, I can throw a little light on that, which comes to me now. After the proceedings in the probate court were closed at a subsequent period, I was consulted in reference to bringing a suit for divorce in this State in behalf of Mrs. Andrews. That correspondence, I think, relates somewhat to that matter. It was while the proposition to bring that suit for divorce was pending, and after Mr. Andrews, or his counsel, had been notified that the suit would be brought here, I was advised of a suit having been brought in Dakota by Mr. Andrews. The settlement that was made was subsequent to both those proceedings—that is, the payment of this $750. The order of proceedings, as I recollect it, was this: First, the proceedings in the probate court in this county for separate maintenance; a hearing on that petition; an agreement as to the terms of the decree; the entry of the decree, and a conveyance of the property, and nothing paid at that time, if I recollect rightly, in money, and no agreement for anything to be paid. Subsequently Mrs. Andrews consulted me in regard to bringing a suit of divorce for her against her husband, and I had various communications with counsel, and interviews with counsel on that subject, but did not, as I recall it, bring any suit for divorce. While that was pending I was informed of the proceedings which had been instituted by Mr. Andrews in South Dakota. What was done there, of my own personal knowledge, I did not know. It was subsequently to that, as I recall it, that this payment of money was made. Subsequent, I mean, to my knowledge of the proceedings out there this payment of $750 was made. That payment of $750 has nothing to do with that agreement (referring to Exhibit 6). I

put it that I was counsel in one suit in 1890 in the probate court, which was settled by that agreement, and subsequently there came some money to my client in the Dakota suit, which was paid through my hands, and appropriated for bills due me for services in the other suit. It is my recollection that the probate proceedings had nothing to do with what was subsequently (done) in Dakota."

Upon cross-examination the witness testified—

"I did not get the information in reference to Mr. Charles S. Andrews obtaining a divorce in South Dakota from him. It appears that I was first informed of the proceedings in Dakota on or about the 28th of November, 1891, and what I said in my note to Mrs. Andrews is, 'Meantime I hear through other sources that Andrews has brought a suit for divorce in South Dakota.' The other sources must have been somebody else than Mr. Andrews' attorney, because I have referred to him in the previous clause, so
25 that it must have been some information from outside, possibly seeing something in the newspaper, or in some other way getting information; at all events, I informed Mrs. Andrews in this letter that I had learned that Andrews had brought suit. I do not know whether that was her first knowledge of it. So far as I know, it was; at all events, I seemed to have informed her of it as a piece of news."

M. F. Dickinson, Jr., called as a witness by the appellee, testified as follows:

"My full name is M. F. Dickinson, Jr. I do not think I had anything to do with the case of Andrews and Andrews while it was in the probate court. I find some reference on my book to copy of a decree of probate court that I paid for and forwarded to Mrs. Andrews, but the first charge I have against Mrs. Andrews is in 1891; that was making a will for her in 1891; and that leads me to believe, as I have refreshed my recollection a little, upon examination, from my books, that that was the first time that I had any professional relations with her. I had an important case for her mother and sisters, growing out of a suit that was brought here by a(person who claimed to be a representative of the brother who was deceased, and that led to Mrs. Andrews consulting me about this matter finally. In the course of time, after the first business that I had transacted for Mrs. Andrews, I had something to do in reference to this Dakota suit, but I did not know anything about its institution and had something to do with some of the proceedings in it. I don't remember whether I took testimony in the suit, or whether the other side took it. I was present at Peabody's office when some testimony was taken, and whether I was present in New York when testimony was taken I don't know. I find on my books a reference to taking testimony in New York, but I can't recall whether I was there or not. I would not swear that I was or was not. I do remember, after the taking of testimony here in Boston, of having something to do with an amount of money that was paid. There was a sum of $300 that was ordered paid to Mrs. Andrews by the Dakota court, as I understood it,—whether it was alimony or money

for her expenses, or what not, I don't know. That came into my hands, $300, and it was paid to me by the senior Andrews, Charles H. Andrews, whom I knew; his sons I did not know. I gave $175 of that to Mrs. Andrews, and kept $125 myself. I ought to be excused for keeping so little; she thought I kept too much, and I am glad that I did not take any more. I can't remember about the sum of $2,050, whether it went through my hands or not. I haven't any record on my ledger of receiving such a sum nor of paying out such a sum, or any part of it, but in my correspondence with Mr. Rathbone of New York I refer to the agreement of $2,050, and I have some correspondence upon that subject with Mrs. Andrews. If I paid that money to anybody, I paid it to her. My recollec-
26 tion is that the check never ran to me; if it was paid by check, that I sent it directly to her. It was given to me to forward to her. She was in New York or Washington—I will not be sure about that, Mr. Bartlett, and I have tried to refresh my recollection about it. I remember the sum very well, and the agreement that was made about it. I don't remember whether the agreement was in writing or not. It was not made by parties in Dakota. It was made with Charles H. Andrews. My impression is that Mr. Charles H. Andrews gave me a bond that he would pay that sum to Mrs. Andrews when the Dakota divorce was obtained. I held his bond, I know that fact, and he made it good, and I gave the bond up to him. I can't remember the particular check for that $2,050, or anything about it. I know that I never had any part of it. It didn't go into my bank account, and I never had it. I think, from letters in my possession, I can be pretty sure that the whole amount was sent, whatever I received, to Mrs. Andrews; I know that. I had authority to accept that amount. I got that authority from my client.

"Q. You had authority April 30, 1892, to take $2,050?

"A. Well— This is a telegram from Washington:

"'4, 30, '92.

"'M. F. Dickinson, 616 Exchange building:

"'I accept the terms if you can do no better.

K. H. ANDREWS.'"

In reply to a question by the court, it was admitted by counsel for Kate H. Andrews that $2,050 was paid by somebody representing Mr. Andrews to somebody representing Mrs. Andrews, and that that was done before the decree of the divorce in Dakota was made. But it was denied that in consideration of that payment a release in the interest of his estate was made. The witness continued:

"There can't be any doubt about the fact that the money was paid; Mrs. Andrews will remember about it. But whether this check was made to her order, or I endorsed it, I can't recollect. I think it was made to her order, because she wrote me that she didn't want I should take any part of that money for any purpose. There was a question of settlement with Mr. Morse in it, I think, and she wanted the whole amount sent, and I sent it, and that's the truth of it, and

I have her letters in which that sum is mentioned, $2,050. She asked me on the 1st of May to send her the full amount when it was received, and not take anything out, or settle with anybody; that is the idea. There is another letter of April 20; you look at that, and there is another sum that is mentioned. I haven't looked at these papers for years, and I have forgotten about the detail
27 of it. Here is a telegram from Mr. Rathbone, dated the 22d of April, New York, asking what the amount she will receive is. Here is the authority for the settlement; that is your own signature. This paper was drawn in New York, and sent to me, was drawn by Mr. Rathbone evidently, because witnessed by him, and sent me as my authority for making the settlement. This is a document made by your own client, and forwarded to you, and it has been in my possession ever since. (Paper was offered in evidence and admitted; marked "Exhibit 7," and is hereto annexed.) The date of that paper is April 22, 1892. I got the $300 earlier than that. I got the $2,050 somewhere about the first of May; I can't state exactly. (Witness examined Exhibit 7.) I should say about this fourth clause that I was never called upon to do anything of that sort. Mr. Rathbone's deposition was taken in New York, I think, to prove the desertion; I think so, but perhaps that was abandoned. At any rate, evidence was taken here to prove the desertion. It never became necessary for me to consent or authorize anybody's consenting to the granting of the divorce, or anything of that kind; I never had any talk with Mr. Bartlett where anything of that kind was talked about. I did not talk much with him; I did my business with Mrs. Andrews and Mr. Rathbone in New York. I did spend nearly a day with Mr. Bartlett in taking testimony and other things. He was there representing one side, I think, and I was there representing the other, and we took testimony before Peabody, and then there was a question about somebody's bill, which made a good deal of discussion. I haven't any memorandum of a release that was drawn at the time of the payment of this money, or any copy of such a release, and what papers were executed I can't tell you, at the time Mr. Andrews paid me that money. I cannot tell whether I ever saw a release or not. I gave up the bond, evidently, because I haven't it in my possession, but whether I did anything more I can't tell you. I have here a letter from Keith & Bates; they are attorneys in Sioux Falls, Dakota, who had charge of Mrs. Andrews' interests there, written to Mr. Woodbury Blair of Washington, and sent to me by him, of April 18."

The appellee then offered in evidence the Compiled Laws of the Territory of Dakota, 1887, sections 2576 to 2585, inclusive.

The deposition of E. P. WHITE, taken and introduced on the part of the libellee, was as follows:

"My name is Edward P. White. I am fifty years old, and I am a stenographer, living in Chicago, Ill. In 1891, 1892, and 1893, I was official stenographer for the circuit court located at Sioux Falls, South Dakota. In 1891 and 1892 I was the official stenographer

for the circuit court of the second judicial district in the State
28 of South Dakota. As such stenographer I was present at the trial of the case of Charles S. Andrews, plaintiff, against Kate H. Andrews, defendant, in the said circuit court, in an action for divorce, and I made minutes of the evidence taken during the trial. I heard the testimony of Charles S. Andrews, plaintiff. I made notes in shorthand, and the notes are contained in the book that I had for that purpose, and were afterwards filed with the clerk of the circuit court in Minnehaha county, where I suppose they are at the present time. I cannot state all that Charles S. Andrews said in regard to his residence in Sioux Falls, and in regard to his voting at elections in South Dakota, or the time when he came to South Dakota, or the length of time that he had been there, or his intentions of staying there; but I know this: He said he was a *bona fide* resident, and that he came there with the intention of making that his residence; my remembrance is he testified that he voted there; the local residence there is three months, and I know he testified he had been there longer than that. I think he was there at least nine months. He testified it was his intention to make that his permanent home. I know that he testified that he lived there longer than the local residence, that he voted there, and I think he said he paid his poll tax, but I am not positive about that. This trial occurred in 1891. I knew Charles S. Andrews personally. I think I first met him in the winter of 1892, it was either 1891 or 1892, and I knew him during the spring and summer of that year. The last place that I saw him was at the trial."

The deposition of DANIEL B. GETTY of Sioux Falls, South Dakota, taken under a commission from this court, was introduced in evidence by the appellee. Witness testified:

"My full name is Daniel B. Getty; I reside in Sioux Falls, South Dakota; I am thirty-three years old, and am clerk of the South Dakota penitentiary. I was a clerk of election held for city officers upon April 19, 1892, in the city of Sioux Falls, South Dakota. I knew Charles S. Andrews, who resided in Sioux Falls, South Dakota, in 1891 and 1892, and I must have known him something like about a year. I don't just remember either when I first met him or when I last saw him. I understood that he came from Boston, or that he came from the East. The said Charles S. Andrews, who came from Boston, voted at the annual city election held on April 19, 1892. I have a recollection of his coming there, and I have his name registered in my handwriting. At that time he resided in ward 1, Sioux Falls, South Dakota."

Witness testified that he had the registry list of voters for the first
29 ward of the city of Sioux Falls for the annual city election held on April 19, 1892, and that he produced it and annexed it to the said deposition as a part of his answer to the 10th interrogatory. Registry list was annexed to said deposition and marked "Exhibit A, F. R. S.," and the registry list annexed is the original.

"I have examined the registry list, and state that Charles S.

Andrews' name appears on the registry list as C. S. Andrews, and also on the poll book as No. 330, in my handwriting. He was the same C. S. Andrews whom I knew, and who I understood came from the East, but I do not know on what business."

The deposition of JAMES L. ROBBINS, taken under a commission issued from this court, was introduced on behalf of the appellee. Witness testified:

"My name is James L. Robbins; age, thirty-nine; residence, Sioux Falls, South Dakota; occupation, laboring man. I resided in Sioux Falls, South Dakota, in 1892. I have resided there for twenty years this fall. I came here in 1878. I was one of the board of registry of voters in the spring election for city officers held on the 19th day of April, 1892, and the other members of the board of registry were George Lowry and Charles Clark. I was one of the board of election judges at that election in Sioux Falls, South Dakota, in ward 1. The other judges were George Lowry and Charles Clark. I do not remember Charles S. Andrews."

The witness produced the registry lists for ward 1 in the annual election of April 19, 1892, and annexed the original list to his deposition and made it a part of answer to interrogatory 10. Registry list marked "Exhibit A, F. R. S." Witness further testified that at the said election there was a book called a poll book. Witness produced poll book containing the names of the persons who voted in ward No. 1 in Sioux Falls, South Dakota, at the election held on the 19th day of April, 1892. Witness examined the poll book, and stated that the name of Charles S. Andrews, or C. S. Andrews, appears on said poll book as No. 330. The appearance of the name of C. S. Andrews on the poll book indicates that he voted at that election. This poll book is made up as the voters come in to vote; as they cast their ballot in the ballot-box their names are put on the poll book by the clerk of election. Witness produced the said poll book, and annexed the same to his deposition, and made it a part of the answer to interrogatory 18, and it was marked "Exhibit B, F. R. S."

"I know Charles S. Andrews, or C. S. Andrews, voted at the election held on the 19th day of April, 1892. I do not know where he came from."

The deposition of WILLIAM H. STODDARD, of Buffalo, N. Y., was introduced in evidence by the appellee. Witness testified:

30 "I am fifty-four years old and past; I live at No. 258 Baynes street, Buffalo, N. Y. I am an attorney-at-law. I have been engaged in practice since 1868. At one time in Sioux Falls, South Dakota. In 1891, 1892, and 1893 I resided in Sioux Falls. I knew Charles S. Andrews while there. I first became acquainted with him late in the summer or early in the fall of 1891, at Sioux Falls, South Dakota. I was one of the attorneys in an action for divorce where Charles S. Andrews was plaintiff and Kate H. Andrews was defendant, pending during the years 1891 and 1892, and during that time I examined titles for him, and drew some con-

tracts for real estate, and advised him generally about business matters in South Dakota. Charles S. Andrews lived at Sioux Falls, South Dakota, for about a year, to my knowledge. While there he lived at the Cataract house. The business that Charles S. Andrews was engaged in while he was in Sioux Falls, South Dakota, was that he reported for some paper in Boston, he loaned some money, and dealt some in real estate. He was the correspondent for the 'Boston Herald' in Sioux Falls during the time that he was there. He was doing a brokerage business and loaning money during the time that he lived there. I had several conversations with him in the summer of 1891 and spring of 1892, and he told me that he intended to live in South Dakota and make it his home. I distinctly recollect four occasions that he stated to me that he intended to become a resident of the State of South Dakota and make that his permanent home. I was with Andrews when he registered for the purpose of voting in the spring election for the city officers in 1892, in the city of Sioux Falls, South Dakota, but I did not see him vote. Charles S. Andrews told me personally that he voted, and my partner, William H. Wilson, also informed me that he voted, and was with him when he did vote. I saw him at and about the polling place on that election day. I had a conversation with him about it, and he told me that he had voted, and the conversation was in the presence of Mr. Buchanan, my partner W. H. Wilson, and Harry Carlton, who was a member of the election board, as I now recollect it. He at that time said that he was a citizen of South Dakota, as he had voted that day. I know that he registered as a voter in Sioux Falls. I saw him in South Dakota, I think, about the middle of May, 1892; I know it was later than the 10th. On that last occasion he told me that he was going back to Boston for a short visit, and was coming back to Dakota to live, and expected to be able to bring back $30,000 in money to invest in South Dakota property. Andrews remained continuously in Sioux Falls from the first time that I saw him until the spring or early summer of 1892, with the exception of about one week when he went to Boston on a visit. While here he made several contracts for real estate, which contracts I drew for him. He frequently consulted with me in regard to buying property in South Dakota near Sioux Falls. He made two or
31 three contracts for the purchase of a quarter section of land in Minnehaha county, to my knowledge, which contracts I drew."

Deposition of GEORGE W. LOWRY of Mason City, Iowa, was introduced by the appellee. Witness testified as follows:

"I am forty-five years old, and I am a druggist. In 1892 I resided in Sioux Falls, South Dakota. I resided there for thirteen years. I was one of the board of registry of voters in the spring election for city officers held on the 19th day of April, 1892, and I was one of the board of election judges at that election in ward 1, city of Sioux Falls. I knew Charles S. Andrews, a resident of Sioux Falls, South Dakota, in 1891 and 1892. I knew that he was engaged in litigation while there. I knew that he was the plaintiff

in a divorce case, in which he sought to recover a decree for divorce from his wife, Kate H. Andrews. The registry list for ward 1, annual election of April 19th, 1892, was turned over to the city clerk of the city of Sioux Falls, and by him, I think, to the county auditor. There was a poll book used at said election, and that was deposited with the same officer. I think Charles S. Andrews' name appears on the poll book as Charles S. Andrews, but I am not sure whether he registered as Charles S. Andrews or C. S. Andrews. The appearance of his name on the poll book indicates that he voted. That poll book is made up in this way: There are two clerks; those clerks include one of the judges of election. At that time my recollection was I gave out the votes. One judge took them. Robbins took them, and Clark kept one of the poll books. When a man comes and wishes to vote I hand him a ballot; he goes into his booth, marks his ballot, and gives it to Robbins, and Robbins puts it in the ballot-box; his name is called off by me, and written on the poll book. I knew Charles S. Andrews personally. I met him two or three days after he arrived in Sioux Falls, South Dakota, my store being the Cataract House drug store and he being a customer of mine almost from the time he arrived until he left. I should judge that he was there almost a year. The Charles S. Andrews who sued for a divorce in the city of Sioux Falls in the year 1891, and whose case was tried in 1892 is the same Charles S. or C. S. Andrews who was registered as a voter in ward 1 at said annual city election held on April 19, 1892. I did not see him sign his name on the registry list of voters. I knew that the same Charles S. or C. S. Andrews voted at that election and I know that the same Charles S. Andrews, or C. S. Andrews, who voted and registered in that April election of 1892 came originally to the State of South Dakota from Boston, Massachusetts, and I know that he was the same Charles S. Andrews who sued for a divorce in the State of South Dakota in 1891 and 1892."

32 On cross-examination witness testified:

"In order that a person may vote at a city election in the State of South Dakota he must be a *bona fide* citizen of the State and of the city. I could not say when Andrews left South Dakota, or the city of Sioux Falls; he may have been there a month after he got his divorce. While there he was engaged in no business, as far as I knew. Andrews boarded at the Cataract house, and the door opens from the Cataract house into the drug store kept by me, and he frequently came into my store, but purchased no intoxicating liquors. Andrews was classed as a divorcé, but as to whether he had any business I do not know. He spent a great deal of time about the Cataract house. Andrews did not say to me that as soon as he could obtain a divorce from his wife he should leave South Dakota and return to Boston, where he intended to reside, or any words to that effect."

JOSEPH L. GLOVER, a witness called by the appellant, testified as follows:

"My full name is Joseph L. Glover; I reside at Ardsley, Winchester county, N. Y. I am an attorney and counsellor at law, with an office at 100 Broadway, New York city. Since 1894 I have been engaged in business there. I was at one time engaged in business in the State of South Dakota. I first went to South Dakota in the early spring of 1890, I think, and left there in 1894. During my residence there I was a lawyer, attorney, and counsellor, and I was engaged in the practice of law all the time that I was there. I knew Charles S. Andrews; I first met him in the latter part of the summer or early fall of 1891. I knew him for seven or eight months, until the early summer or spring of 1892. I have never seen him since the spring or summer of 1892. From the spring and summer of 1892 until I left South Dakota I saw him in South Dakota, and at Sioux Falls; I never saw him in any place else except there, and the last I saw of him was when he left there, a day or two previous to the day he left. At all events, it was the day of the trial or hearing of his divorce case. During the time he was in South Dakota I saw him very frequently, often every day; probably three or four times a week after I first met him, anyway; it was shortly after he came there. While he was there he stayed at the Cataract hotel; it was an ordinary hotel, considered the best hotel in Sioux Falls for transient business. I used to talk with him whenever I met him. I never heard him speak of having any business in South Dakota; I never saw him do any business there. I consider that my associations with him were intimate. I can't tell you the time when I first talked with him about his business in South Dakota; I couldn't give you the exact date, but it was shortly after he came there. I had a conversation with him about his business
33 there. The substance of it was he told me he had come there for a divorce, and told me some of the facts of his case, which I disremember, except that he said the ground upon which he proposed to seek a divorce was desertion. In that conversation, or some subsequent conversation, he mentioned the name of his wife. He called her Kate or Katie. At subsequent times he talked with me about his business, and about what he came there for. The first conversation I am able to locate as in the late summer or fall of 1891. It was two weeks after, or very shortly after, he came there. After that I saw him frequently. I think I saw him next day. When I saw him I used to talk with him, as a rule; we used to play billiards frequently. At these subsequent times he talked about what he came there for again. Frequently little things were said; he told me when his case would be commenced; he used to speak of it frequently as so many more days or weeks, whatever the time might be, before he would institute his proceedings, before he would have been there the requisite amount of time. That length of time, he told me, was ninety days. In these conversations he mentioned the names of his attorneys. He frequently spoke of Judge Carland and Captain Stoddard as his attorneys. I remember the occasion, or about the time the action for alimony was argued; that was in the

latter part of the winter or early spring of 1892. On that occasi
I walked into the office of the Cataract hotel and met him in t
office. I had a conversation with him previous to the applicatio
and one subsequent to it. In the first conversation he stated th
he expected the motion to be heard in a few days. He said that
was very much dissatisfied and angered because Messrs. Keith
Bates had delayed him so long in bringing this motion on for
hearing, and that was the substance of his woes to me on that da
The following conversation which I had with him was on the eve
ing of the day on which the order fixing the amount of alimo
and attorneys' fees was made. That evening he was in a differe
frame of mind, and said that he had won, and that that determin
practically his case—that he was then sure that he would get a d
vorce. The Cataract house and my office were in the same bloc
The Cataract house is on the corner of Phillips avenue and 9
street, and my office is on the corner of Main avenue and 9th stre
I remember the evening of this second conversation because I play
billiards with him nearly all the evening after nine o'clock—wi
Mr. Andrews and a Mr. Pollock, and a gentleman known as Mr. E
liot, whose real name I afterwards learned was Elliot Zebroski. T
business of the other two gentlemen who were with me that nig
in South Dakota I knew: Pollock was there for a divorce, and Z
broski was there as the alleged cousin of Madame De Stuers. Af
this occasion I saw him frequently up to the time he left the State
he used to come into my office. He frequently spoke of Boston
had formerly lived there), and of the pleasure of living
34 Boston as distinguished from South Dakota; the vario
places of amusement in and about Boston, and the social a
vantages here as distinguished from Sioux Falls; and frequent
spoke of people and things in and about Boston, which were famili
to both of us; and he often remarked to me that as soon as he g
through with his divorce case there he should return. I never hea
him in any conversation express any intention or desire to remain
South Dakota or at Sioux Falls; quite the contrary. I heard hi
refer to Boston as his home on several occasions. I met his fath
Charles H. Andrews, in the office of the Cataract hotel, on the eve
ing of the day that the evidence in the divorce application was hear
and had about two minutes' conversation. I don't know what t
conversation was. It was in the spring of 1892. I remember th
much about it, that Charles S. Andrews said that they had had the
hearing, and that he expected to go home with his father. I do n
know how soon after that he left Sioux Falls. To the best of m
recollection, I never saw him there after that evening. At that ti
Sioux Falls was a place that was claimed to have a population
15,000 people, but, actually, it had perhaps 10,000 or 12,000. I ha
never seen Mr. Charles S. Andrews since."

The witness was shown a photograph, and testified that it was
photograph of Charles S. Andrews. Photograph was marked "E
hibit 2."

On cross-examination witness testified:

"I am thirty-four years old. I originally came from New Ham

shire. I did not practice there; I was in the office of a lawyer there. I was admitted to the bar in Michigan, June 20, 1899. I went to Sioux Falls in the spring of 1890, and was associated there with Mr. Donovan; afterwards associated with a Mr. Orr. I was deputy for the State's attorney at one time. There was a concern in Sioux Falls by the name of Stoddard & Wilson at one time. I couldn't tell just when it was. They might have been there about the time that Mr. Andrews was there; I believe they were together. They were together in 1892, I believe. Mr. Wilson, who appeared in the hearing in this present case, admitted that he was the Wilson of Stoddard & Wilson, and it was admitted that whatever the record of the South Dakota court showed Mr. Wilson had to do with it, that this was the Mr. Wilson. Mr. Wilson stated that there was no appearance by him in the suit."

Witness further testified:

"I have been practising law in New York since 1894. My attention was first called to this probate petition, I presume, about six months ago, by Mr. Wilson, if I remember correctly. I think he sent for me by letter, but the first that I knew about this matter came through Mr. Wilson; and before going on to the stand I have had a conference with him here in Boston. After the conversations occurred, the first time that they were called to my attention afterwards, it might have been six months ago, and this Mr. Wilson asked me in reference to any conversation which I had with Mr. Charles S. Andrews. I think he came over to New York to see me. I came here this time at the request of Mr. Wilson."

GEORGE P. NOCK, called as a witness for the appellant, testified as follows in response to questions by Mr. Wilson:

"My name is George P. Nock. I am a lawyer residing in New York city. I have been there three years in February, practising all the time. Previous to my going to New York I lived in Sioux Falls, South Dakota. I went to South Dakota in May, 1889, and left there in 1896. I was practising law there. I knew a gentleman who was introduced to me as Charles S. Andrews. He was living at the Cataract hotel in the city of Sioux Falls. As I remember it, I first saw him about September, 1891. I didn't get very well acquainted with Andrews at first. He came there in the fall; he remained there during the winter, and in the spring I got very well acquainted with him. We then got to be very close friends through a Mr. Pollock, whom I knew very well there. That acquaintance continued up to the time that he left. The last that I saw of him was some time in 1892. I am not sure about the month. He introduced me to a gentleman as his father, who was staying at the Cataract hotel, and he stated he had just concluded his trial, and that he was going to return to Boston the next day, or the day after, with his father. After that I was in Sioux Falls until 1896. I never saw him after that. During our friendship I had numerous conversations with him. I used to drive a great deal. I kept horses while I was there, and he was out with me on several different occasions riding. He took a drive with me one afternoon out west of the city, and he then told

me all about his troubles, particularly what the difficulty was with his first wife, and that he had come out there for the purpose of getting a divorce, and that he was interested in the 'Boston Herald.' He said to me that he had a business interest in the 'Boston Herald,' and that he was very anxious indeed to get back to Boston to look after his business. He also stated to me at that time that he was very much annoyed at the way Mr. Keith had delayed and kept him out there. He said Keith hadn't done right, and had lost him a great deal of valuable time, and a great deal of money in the business which I understood him to be connected with here. I had frequent talks with him afterwards. He and I and Pollock used to talk every time we met to the same effect. I can't tell you
36 Mr. Wilson, exactly what was said in those conversations, but the general gist of the conversations was that they were very much annoyed that they had to remain there so long, and he was very anxious to get back to what he called his home in Boston Massachusetts. I probably saw him two or three times a week. I never knew of Andrews being engaged in any business there."

The witness identified the picture marked "Exhibit 2" as the gentleman he was introduced to as Mr. Charles S. Andrews.

Upon cross-examination the witness testified that he received a letter from Mr. Wilson asking him if he could be here in Boston on Tuesday.

"There was no compensation, or none promised. I paid my own expenses. I think I was introduced to Andrews' father in May 1892. I know it was in the spring, or just as summer commenced. I think it was the day the divorce case was tried, because I remember he said when he introduced me, 'My father has been out here to testify in the case.' My attention was first called to this present case in November, this year. It was not called to my attention by Mr. Wilson. I met Mr. Glover in the street in New York city, and he asked me if I recollected Mr. Andrews."

CURTIS HUESTED WINSOR, called as a witness for the appellant, testified in answer to questions by Mr. Wilson, as follows:

"I reside in New York city, and have been practising law there. I went there three years ago last October. Previous to that I was in Sioux Falls practising law there for twenty-five years. I am fifty-one years old. I was admitted to the bar before I was twenty-one years of age, in South Dakota, to save questions. From 1870 to 1895 I practised law in South Dakota, when I went to New York and became a member of the firm of Maxwell, Chandler & Phillips of that place. I knew Charles S. Andrews, but I was not familiar with him. It was either in the fall or early winter of 1891, I think; it may have been in the fore part of 1892. I had a conversation with him about the first time I met him. He wished to retain me as an attorney in a divorce case which he had pending there, or expected to have, and it was in the Cataract house that he first spoke to me—that was the usual meeting place for business men there, and my office was across the street also from the Cataract house—and he asked me if he could retain me in the case. I told him that I un-

derstood he had attorneys, and that he could not talk to me about the case at all. He had Judge Carland and Captain Stoddard, and if there was any retainer it must come from them. I couldn't talk with him about the case. He was a little under the influence of liquor, I think, and he insisted
37 on telling me something about his matters. I don't remember particularly the details, except that he said he had come there for a divorce, and that he was going to move out of the damn country just as quick as he got it; that was about the substance of it, that he wouldn't live there. I had a subsequent talk with him; he came over to my office with Mr. Zebroski at another time; that was Elliot Zebroski, who afterwards married Madam De Stuers, and he again wanted to retain me, and I told him the same thing, that I couldn't be retained except through his attorneys. I remember the last time I saw him in the spring of 1892. There was a little balcony in front of the Cataract house where we used to sit evenings, with a sort of a balustrade, and I remember that he was sitting on that side of the entrance and I was sitting on the other, and he said he would like to introduce me to his father, and he introduced me to an elderly gentleman and said that it was his father, and said that he had practically got through with his business, and that he had to pay $150 counsel fee to settle, and that Captain Stoddard had played a good joke on Keith by putting all silver dollars in the bag and carrying them down to Keith, and Keith didn't like it; said he was soon going away, and that he was going back to Boston just as soon as he could go. I remained in Sioux Falls after that until October, 1895. I never remember seeing him there after that evening when he introduced me to his father. I never knew or saw Mr. Andrews engaged in any business there; he was a boarder at the Cataract house, and engaged in a good deal of pleasure, but not any business that I ever knew of."

On cross-examination the witness testified:

"My attention was first called to this by Mr. Wilson in a letter received from him, asking me if I would come here to testify in this case of Andrews *v.* Andrews. Nothing was called to my attention about it until I came here. I did not know what was wanted until I came. I was over here a short time ago, but I didn't see Mr. Wilson. I have not been promised any compensation. I will get my expenses paid, of course. I think Mr. Wilson has given me $35, and I have been here three days."

JAMES P. WADE, a witness called by the appellant, testified as follows:

"I reside in Cambridge. I knew Charles S. Andrews; I saw him several times in 1891, in the fall and during the summer. I had a talk with him whenever I met him. One time in the fall of 1891 he gave me a check for services I had done for him. That was on the corner of Water and Devonshire streets. He said I wouldn't see him again very soon for a while. I asked him why. He
38 said he was going out to Dakota to get rid of his wife. I

don't remember when I next saw him; it was quite a while befor I saw him again. I don't remember how long."

On cross-examination witness testified:

"I do not know the date of the conversation."

GEORGE H. ANDREWS, a witness called by the appellant, testifie as follows:

"I reside in Swampscott, Mass. I am a brother of the lat Charles S. Andrews. In the early part of 1891 he was in Bosto He lived at his home, 401 Beacon street. We were together there In the latter part of the spring or early summer of 1891 he said h was going to South Dakota to get a divorce from his wife, Kittie S Andrews. I believe he did go. The next time I saw him was year from that time, in the early part of the spring, 1892, here i Boston. He didn't do any business when he came back, to m knowledge; he stayed at home most of the time. When he cam back in 1892 I think he came to 401 Beacon street, the house of m father, Charles H. Andrews."

On cross-examination witness testified:

"My father, Charles H. Andrews, died the 1st day of June, 189 My brother's death was some two or three months after that; Oc tober, I believe. Charles S. Andrews left Boston in the early pa of the spring of 1891."

KATE H. ANDREWS sworn, and in her own behalf, testified:

"My full name is Kate H. Andrews. My father and mother ar living in Washington. My father is an officer in the United State Navy. I knew Charles S. Andrews, and was married to him on th 13th day of April, 1887, at St. Paul's church, Boston, by Bisho Courtney. After I was married I lived with my husband at 38 Commonwealth avenue. I lived at no other place than within th Commonwealth of Massachusetts. I went to Europe in 1887, an again in 1889, in the summer; otherwise I have always resided i Boston. I went abroad with my husband after I was married, an again in 1889. I never went with him out West; I never live with him out West."

On cross-examination the witness testified:

"There was a child born, and that child died in January
39 1889. Some time in 1890 there was a hearing in the probat court. During the progress of that hearing I was living i New York. I was with my mother and father at the New Yor hotel in New York. I had been living there in New York a fe weeks only. I had gone from here over to New York. I went fro Boston to New York with my mother and father; it was early i May, 1890. After these proceedings in the probate court they wer appealed and went to the superior court. Previous to the time o commencement of these proceedings I had been living at No. 38 Commonwealth avenue. I was living there at the time that I con sulted a lawyer in regard to my affairs. It was in March, some time 1890, and at that time Mr. Andrews was living there with me, an I consulted a lawyer in reference to those proceedings while Mr

Andrews was still in the house. Some time after the hearing in the probate court the house stood in my name, and before these proceedings I rented it, and after it. I first commenced to rent the house in the fall of 1890. I first rented the house for six months only to Mr. Samuel Hoar; he only had it for six months. After Mr. Hoar went out I was there the following summer with my mother, father and sister. That was in 1891. I remained in 1891 until the fall, when I was able to rent it. I was there for the purpose of putting the house in order and trying to rent it. I left the house, I think, some time in September, and went to Washington with my mother and father. That was in the late fall of 1891. I rented the house, I think, in September, if I remember correctly, of 1891, on a lease for three years. It came back into my hands, so that I had to rent it over again in the spring—I mean the spring of 1893. I then came to Boston and fixed it up again. I wasn't there myself that summer; I was here in Boston and had the house put in order, but I didn't occupy it. I was here in Boston while I was putting the house in order, for about two months. I stayed with my aunt at Newton, where I make my home always when I am in Boston. My aunt's name is Miss Baury. From 1893 down I came on here and stayed with my aunt at Newton; that is my home, in Newton, excepting when I visit my parents in Washington and other people; that is my home with my aunt in Newton, Miss Baury. I visit my parents in Washington, and other friends. Really, my home has been here looking after my property. I consider Boston my home; I have always resided here, and it is my home. When I speak of Washington, that's where I go to visit; that's where my father and mother live. I stay sometimes with them quite a while, then come back here, and am here for quite long intervals. I have stopped at other places besides Miss Baury's. I have stopped at 11 Beacon street."

The envelope marked "Exhibit 8," and letter marked "Exhibit 9," were then shown to the witness. Witness testified that they were in her handwriting and that the signature was hers.

40 The letter was offered in evidence, introduced, admitted, and hereto annexed marked "Exhibit 8" and "Exhibit 9."

"That letter was in 1895. I had seen Mr. Andrews, Sr., previous to that. I had had no interviews with him. I had seen Charles H. Andrews after the time of the divorce, but had had no conferences with him up to the time I wrote this letter. At the time that I rented the house the title to it stood in my name, and it came to me from Mr. Morton. Mr. Morton was the conduit from my husband round to me. There was a bill of sale of the furniture of the house given to me, so that I had all the furniture in the house. At the time the $2,050 was paid over by Mr. Dickinson I was here in Boston. That money was paid over to me by Mr. Dickinson. I got it at his office. I think it was Mr. Charles H. Andrews' check; I cannot be positive, but I think it was. I had previously received the other sums that were received for my benefit, the $300 and the $150. I knew about those sums of money, that they were ordered to be paid me. I knew that they were ordered by the court to be paid me, and ordered at the

request of my counsel, and that was afterwards paid me, and that was paid by Mr. Dickinson. At the time of the payment a paper was presented to me by Mr. Dickinson for my signature. The paper that was presented was this agreement, Exhibit 7. When it was presented to me I signed it. There was no other paper. Mr. Dickinson was not present at all. The paper that I signed I signed in New York. Mr. Dickinson dictated this agreement over the telephone; it was taken down in this gentleman's office, this Mr. R. C. Rathbone, of New York, who is a friend of my father's; his stenographer took down what Mr. Dickinson dictated, and which I was to sign, and it was for me to sign; that is the only paper I ever signed. At the time that I signed that paper the $2,050 was to be paid. I did not receive the money for some time afterwards. At the time I did receive the money I did not sign any paper, simply the money was handed over to me by Mr. Dickinson; that was in May, 1892, I think. The money was received by me in May, 1892, early in May, I do not remember the exact date. At the time I received that money I did not see Charles S. Andrews. I saw him after that time; I saw him on the horse car, coming down. I saw him several times on the street in Boston. I saw him once or twice in the theater. I didn't think anything about whether he was living in South Dakota or not. I did not know. After the time that I understood that he was in South Dakota, I saw him at one time; he came down to the house; that was in 1891, before he went to Dakota. After he returned, and after I got this $2,050, I did not see him or talk with him. I understood that he was living in Boston. I heard that he was around here."

The appellant then introduced in evidence original probate
41 papers of the county of Suffolk, No. 105,473, Kate H. Andrews *v.* Charles S. Andrews. This petition was filed in the probate court for the county of Suffolk by Kate H. Andrews, praying for a separate maintenance from her husband, Charles S. Andrews, on the 23d day of July, 1897, and asking for an attachment. Attachment was made by Albert C. Tilden, deputy sheriff, as per the return on the citation, August 10, 1897, in the sum of $20,000, in the estate of Charles S. Andrews. Messrs. Bartlett & Anderson appeared for the defendant, August 20, 1897.

RICHARD C. WHEELWRIGHT, a witness called for the appellant, testified as follows:

"I am the cashier in the office of the Herald Publishing Company in Boston, and have been there between sixteen and seventeen years. I knew Charles S. Andrews. By request I have examined the vouchers and books of the Herald Publishing Company to see whether Charles S. Andrews received any money from the Herald Company from June 1, 1891, to June 1, 1892, and I find he did not. All records of money paid employees were kept in my department at that time. All facts would appear in these books. Charles S. Andrews, some time after June, 1892, came into the employ of the Herald Publishing Company, and was on its pay-roll. He was not on the pay-roll up to the time of his death. He was on, off and on,

I don't think he was there steadily; I think sometimes he was away."

The deposition of CON HUDSON of Yankton county in the State of South Dakota was put in evidence by the appellant. Witness testified:

"My name is Con Hudson; I am thirty-three years old; I now reside in Charles Mix county, this State, near March post-office. Lived in Yankton county until the fall of 1897. I am a horse dealer by occupation. From the spring of 1891 to the summer of 1892 I lived in Sioux Falls, South Dakota. I was employed as bartender in the saloon connected with the Cataract house, and during the time I was there I became acquainted with Charles S. Andrews. I first met him in the saloon or billiard hall connected with the Cataract house in Sioux Falls. I think it was about the month of May, 1891; anyhow, it was in the spring or early summer of that year. During the time of the spring of 1891 to the summer of 1892 I met him every day, sometimes several times a day. I met him in the saloon almost every day, possibly sometimes in the office of the hotel, and occasionally on the street. Occasionally he would speak to me about his divorce. Of course sometimes would say something when he was having a good time in the saloon and would be drinking. I remember he said several times that he came there to get a divorce on account of the desertion of his wife. I
42 don't remember any of the details of his telling me, only that he said his wife deserted him. While he was having a good time I have often heard him speak with others in a general way about his divorce matter, and that he was out there for a divorce. These conversations took place in the saloon, either in the saloon or the billiard hall. You know the billiard hall was in the front room under the Cataract, and in the back room the saloon; kind of two rooms like. When he was out there he was boarding at the Cataract house. He never kept house that I know of. I don't think he did, for I never heard of it, and he was always there at the hotel. I don't remember whether I was ever at his room or not. I was there once. The time I happened to go up there was when they had been gambling downstairs, and they had given him a false dice box. I went up to tell him that the dice box was not right. I don't remember just what it was, but I know I went up to tell him about the dice box those gamblers had that wasn't right; and as far as I know he didn't pay any of that sum of money he lost that night, on account of my telling him about the false box. That was the only time I remember being at his room. I am quite sure he lived at the hotel all the time while he was in Sioux Falls. In his room he didn't have any property except his clothing that I saw or know of. I remember that he had a trunk and clothing in it; that is all the property that I know he had. I never knew of his having any other property. He sometimes hired a horse from the livery at Mark Bridge's barn there. I never knew he had any other property than what he had in his room there; not that I know of. I am sure he was not engaged in any business there, because I never saw him

at work or doing anything, and he was around the hotel all the time doing nothing there that I ever seen. During the period I saw him sometimes once a day, sometimes five or six times a day, just as it happened, sometimes probably more, sometimes I saw him frequently in the same day. In the fall of 1891 he said nothing to me, only he would talk about his divorce once in a while, and once in a while he would talk about Boston and New York, and what good times he could have there besides out here. He frequently told about his divorce, and said he was there for the purpose. I heard him speak frequently about that. He would talk sometimes with me and sometimes with others who were in the saloon at the time. I remember just a couple of days before he was going to have his trial he said he was going to have his trial and was sure to get his divorce. And afterwards he said that he got his divorce. He told me this, I suppose, in the spring of 1892 at the Cataract House saloon or billiard hall. He never told me that he intended to stay in Sioux Falls, but told me that he intended to go back to Boston just as soon as he got his divorce. As far as I could understand from his speaking and talking around with others, he came there just to get his divorce. He spoke in that kind of a way to me, as far as I can remember.
43 He didn't say exactly where he intended to live, only he said he was going back to Boston. He said he would not live in this country for anything. I can't tell just when Andrews came to Sioux Falls, only the first time I seen him was in either the last part of April or the first part of May, 1891, when I seen him first at the Cataract house in Sioux Falls. I don't remember about his speaking of the climate of South Dakota; he was always talking about the people in Boston, and how smart the people there were, and said the people out here didn't know anything; I know I had a fuss with him at one time about that same question. I don't remember whether he said anything about the climate or not, but I know he was always running down the people here and telling how smart the people in Boston were; that the people here didn't know much, they had not had much education or something. I never had any conversation with Andrews relative to his purpose in coming to Sioux Falls, only in regard to his divorce. He said he came there for a divorce, and this occurred several times when I heard him speak of the same thing during the time I knew him there at the Cataract house. I heard him speak several times as to how his divorce business was getting along. I think he went away from there the second or third day after he got his divorce; I think it was not longer than the third day afterwards. His father was out there; he came there after him. The last time I saw him was in the spring of 1892. It was quite nice weather. He said he had got his divorce and was going back to Boston. While Andrews was in Sioux Falls he associated with Pollock,—he was there for a divorce also,—and Algiers another divorce man, and also a man that came there with Madam De Stuers. He was called Elliot. His right name was Zorobrowsky, or something like that, and he was the man that married Madam De Stuers the day after she got her divorce. Andrews was most all the time

around with Pollock. He was his most intimate friend while they were there. When he was in my place of business he didn't do anything except stand around, drink, and play billiards. He told me that he wouldn't live in this country, and that he was going back to Boston to live just as soon as he got his divorce business fixed up."

This, together with the exhibits hereto annexed, is all of the evidence introduced in the said case and material to the issues raised by this bill of exceptions.

At the conclusion of all of the evidence in the case the appellee asked the court to rule,—

First. And now comes the appellee, and asks the court to rule that upon all the evidence in the case the appellant has no standing in this court, and is not a person interested in the estate of Charles S. Andrews, deceased.

Second. That upon all the evidence in the case the appel-
44 lant by her own conduct has connived at and acquiesced in the marriage of the said Charles S. Andrews and the appellee, Annie Andrews, and on account of said connivance and acquiescence in said marriage she cannot now be permitted to be heard to impeach the validity of said marriage.

Third. That upon all the evidence in the case the appellant by her own conduct has connived at and acquiesced in the marriage of the said Charles S. Andrews and the said appellee, Annie Andrews, and, without objection, has allowed the said marriage relations to exist and children to be born of the said marriage, and she cannot now be heard to impeach the validity of said marriage by attacking the validity of the divorce procured in the circuit court of South Dakota by the said Charles S. Andrews against her.

The presiding justice refused so to rule, to which refusal to rule the appellee duly excepted; but the presiding justice found the following facts, and ruled as hereinafter set forth:—

Findings of Fact.

SUFFOLK, *ss:*

Supreme Judicial Court.

ANNIE ANDREWS, Adm'x,
v.
KATE H. ANDREWS, App't. } No 6084.

I find the following facts:—

Charles S. Andrews (being then about twenty-one years of age and domiciled in Boston) and the appellant were married there April 13, 1887, and thereafter lived in Boston as husband and wife until the latter part of April, 1890, at which time the wife, claiming to have justifiable cause therefor, left her husband and began a suit for separate maintenance, which was finally settled in December, 1890, in the manner disclosed by the evidence, in accordance with the agreement of November 18, 1890.

A child, the only issue of this marriage, died in January, 1889. In the summer of 1891 the husband, being then and ever since his

marriage domiciled in Boston, went to South Dakota to obtain a divorce for a cause which occurred here while the parties resided here, and which would not authorize a divorce by the laws of this Commonwealth; he remained personally in that State a period of time longer than is necessary by the laws of that State to gain a domicile there, and on November 19, 1891, filed a petition for divorce in the proper court of that State. The wife received notice, and appeared by counsel and filed an answer, denying that the libellant was then or ever had been a *bona fide* resident of South Dakota, or that she had deserted him, and setting up cruelty on his part toward her. This case was settled, so far as the parties were concerned, in accordance with the terms of the agreement of April 22, 1892, signed by the wife and consented to by the husband, and, for the purpose of carrying out her agreement "to consent to the granting of divorce for desertion in South Dakota," she requested her counsel there to withdraw her appearance in that suit, which they did, and thereafterwards, namely, on May 6, 1892, a decree granting the divorce was passed, and within a day or two afterwards the said Charles, having attained the object of his sojourn in that State, returned to this Commonwealth, where he resided and was domiciled until his death, which occurred in October, 1897.

The parties had never lived together as husband and wife in South Dakota, nor was it claimed that either one of them was ever in that State except as above stated. After the wife left her husband in 1890, she visited some time in New York, but had her home in Boston. In the fall of 1891 she leased her house in Boston for three years, and in November, 1891, went to stay with her parents in Washington, D. C., indefinitely, and since that time has remained a part of the time with her parents at Washington and a part of the time with her aunt in Newton in this State. I do not find that since her marriage her domicile has been changed, unless, as a matter of law, it was changed to South Dakota when her husband went there. She has always since her marriage intended that her home should be in this State, and considered it to be here.

I find that the husband went to South Dakota and took up his residence there to get this divorce, and that he intended to return to this State when the business was finished. He boarded at a hotel in Sioux Falls all the time, and had no other business there than the prosecution of this divorce suit. I find, however, that he voted there at a State election in the fall of 1891, claiming the right to do so as a *bona fide* resident under the laws of that State. His intention was to become a resident of that State for the purpose of getting his divorce, and to that end to do all that was needful to make him such a resident, and I find he became a resident if, as a matter of law, such finding is warranted in the facts above stated.

Upon his return to this State he soon met the petitioner, and on January 11, 1893, they were married in Boston, and ever after that lived as husband and wife in Boston, and were recognized as such by all until his death. The issue of this marriage are two children still living.

The petitioner at the time of the marriage believed that the said Charles had the right to marry. She had nothing whatever to do with the divorce, was in no way the alleged or actual cause of the disagreement between the said Charles and the appellant, and throughout has acted in the utmost good faith. She knew of the divorce, but believed it was legal, and had reason so to believe.

The appellant knew of this second marriage soon after it occurred, and never took any steps to have it declared illegal, except that on July 23, 1897, she filed in this court a petition for separate maintenance against the said Charles, which was pending at the time of his death, and that she has appeared in this present case;
46 and it does not appear that until after the death of the father of said Charles in June, 1897, she even claimed or believed the divorce illegal, or had any idea of making such a claim.

I find, if the finding is warranted by the above facts, that the appellant connived at and acquiesced in the second marriage. I decline, however, to rule as requested by the petitioner in the paper hereto annexed.

I rule that the divorce obtained in South Dakota is, by Pub. Sts., c. 146, sec. 41, of no force or effect in this Commonwealth; that the respondent must be regarded as the lawful wife of the said Charles, that the second marriage was therefore illegal; and having so ruled I order the decree of the probate court to be reversed and case remanded to said court.

To all of which rulings and orders the appellee duly excepted, and now asks that her exceptions to the refusal of the presiding justice to rule as requested, and her exceptions to the rulings made by the presiding justice, be allowed.

ANNIE ANDREWS,
By BARTLETT & ANDERSON,
Her Attorneys.

Filed March 2, 1899.

Exceptions allowed.

JOHN W. HAMMOND, *J. S. J. C.*

Request for Extension of Time for Filing Exceptions.

And now comes Annie Andrews, administratrix, appellee, and asks that the time for filing exceptions to the rulings and refusals to rule of the presiding justice, at the trial of said cause, may be extended to and including Thursday the 2d day of March, 1899.

ANNIE ANDREWS,
Administratrix,
By BARTLETT & ANDERSON,
Her Attorneys.

Allowed.

JOHN W. HAMMOND, *J. S. J. C.*

(*Exhibits Annexed to Bill of Exceptions.*)

EXHIBIT 3, W. R.

HERALD OFFICE, BOSTON, MASS., *Sept.* 1, 1891.

This certifies that C. S. Andrews is an authorized reporter and correspondent for the Boston Herald at South Dakota.

47 Unless previously revoked, this certificate expires on the 1st day of Sept., eighteen hundred and ninety-two, at which time it must be returned for exchange.

No. 476. THE BOSTON HERALD CO.,
By FRED E. WHITING, *Clerk.*

EXHIBIT 4.

UNITED STATES OF AMERICA.

STATE OF SOUTH DAKOTA, }
County of Minnehaha, } *ss:*

I, Albion Thorne, clerk of the circuit court of the second judicial circuit in and for said county of Minnehaha, State of South Dakota, having by law the custody of the seal and all the records, books, documents and papers of, or appertaining to said court, hereby certify the papers hereto annexed to be true copies of papers appertaining to said court, and on file and of record in the office of said court, to wit:

Summons, complaint, affidavit and order for publication of summons, notice of appearance, affidavit of defendant's attorney, order, answer, affidavits of defendant and defendant's attorney in support of motion for temporary support, expenses and counsel fees and affidavits of plaintiff, Charles H. Andrews, Blanche Andrews, and George H. Andrews in opposition thereto, order for payment of expenses and attorney fees, receipts, notice of withdrawal of appearance, findings of fact, conclusions of law and decree in an action heretofore pending in said court, wherein Charles S. Andrews was plaintiff and Kate H. Andrews was defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 20th day of May, A. D., 1892.

{ The Circuit Court, Minnehaha County, State of South Dakota. Clerk. }

[SEAL.] ALBION THORNE,
Clerk of the Circuit Court of the Second Judicial Circuit in and for Minnehaha County, State of South Dakota.

UNITED STATES OF AMERICA.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

I, Frank R. Aikens, judge of the circuit court of the second judicial circuit, within and for the county of Minnehaha and State of South Dakota, do hereby certify that Albion Thorne, Esq., whose signature is affixed to the annexed certificate and attestation, is the clerk and proper certifying officer of said court, and has, by
48 law, the custody of the seal and all the records, books, documents and papers of, or appertaining to said court, and that said certificate and attestation are in due form, and entitled to full faith and credit.

In witness whereof I have hereunto set my hand this 26th day of May, A. D. 1892.

FRANK R. AIKENS,
Judge of Circuit Court.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

I, Albion Thorne, clerk of the circuit court of the second judicial circuit in and for the county of Minnehaha, State of South Dakota, hereby certify that Frank R. Aikens, Esq., whose signature is affixed to the foregoing certificate, is the sole presiding judge of said court, duly commissioned and qualified, and that his certificate is in due form, and entitled to full faith and credit.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of May, A. D. 1892.

{The Circuit Court, Minnehaha County, State of South Dakota.}

[SEAL.]

ALBION THORNE,
Clerk of Circuit Court.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In the Circuit Court Thereof, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff,
vs.
KATE H. ANDREWS, Defendant. } Summons.

The State of South Dakota to the above-named defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above-entitled action, which said complaint will be filed in the office of the clerk of the circuit court of the second judicial circuit of the State of South Dakota, within and for the county of Minnehaha and to serve a copy of your answer to the said complaint on the subscribers at their office in the city of Sioux Falls in the county of Minnehaha, in said State of South Dakota, the said city of Sioux Falls being a place where there is a post-office, within thirty days after the service of this summons upon you, exclusive of

the day of such service; and if you fail to answer the said co plaint within thirty days after the service of this summons up you, the plaintiff in this action will apply to the court for the rel demanded in the said complaint.

Dated November 19", A. D. 1891.

W. H. STODDARD,
JOHN E. CARLAND,
Attorneys for Plaintiff, Sioux Falls, Minnehaha County, South Dakota.

49 STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

I, John Sundback, sheriff of the county of Minnehaha and St of South Dakota, do hereby certify that the within summons ca into my hands for service on the 19" day of November, A. D. 18 That I have made diligent search for the said defendant, Kate Andrews, and that said defendant after diligent search cannot found within the said county of Minnehaha aforesaid, and that s is not a resident thereof.

Dated this 19" day of Nov., 1891.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In the Circuit Court Thereof, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff,
vs.
KATE H. ANDREWS, Defendant. } Complaint.

Plaintiff complains of the defendant and alleges:

I.

That the plaintiff now is and for more that ninety days last p has been a *bona fide* resident in good faith of the State of South D kota.

II.

That heretofore and on the 13th day of April, A. D. 1887, t plaintiff and defendant intermarried at the city of Boston in t State of Massachusetts, and ever since have been and now are h band and wife.

III.

That on or about the first day of May, A. D. 1889, the said defe ant disregarding the solemnity of her marriage vow wilfully a without cause deserted and abandoned this plaintiff and ever sin has and still continues so to wilfully and without cause desert a abandon said plaintiff and to live separate and apart from him wi out any sufficient cause or any reason and against his will and wi out his consent.

IV.

Plaintiff further shows that the act aforesaid was committed by the defendant without the consent, connivance or procurement or previous knowledge of this plaintiff, and that he has in nowise condoned the offence, aforesaid.

V.

Plaintiff further shows that there are no children born of the said marriage, and that the desertion aforesaid was without cause and contrary to the wishes of this plaintiff.

Wherefore plaintiff demands judgment that the marriage relations now and heretofore existing between this plaintiff and the defendant may be dissolved, and that plaintiff have such other and further relief as to the court shall seem just and proper.

W. H. STODDARD,
JOHN E. CARLAND,
Attorneys for Plaintiff.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

Personally appeared Charles S. Andrews, who being duly sworn deposes and says: That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same are true of his own knowledge, excepting as to those matters stated therein to be alleged on information and belief and as to those matters he believes it to be true.

CHARLES S. ANDREWS.

Subscribed and sworn to before me this 19th day of November, A. D. 1891.

FRANK R. SIDWELL,
[SEAL.] *Notary Public, Minnehaha County, S. D.*

Filed this 19 day of Nov., 1891.
ALBION THORN,
Clerk Circuit Court.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In the Circuit Court Thereof, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff,
vs.
KATE H. ANDREWS, Defendant.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

Personally appeared Charles S. Andrews who being first duly sworn deposes and says: That he is the plaintiff in the above-entitled action; that he resides in the county of Minnehaha and State of South Dakota; that a summons has been issued herein and the com-

plaint herein duly filed in the office of the clerk of the circuit cou
in and for the second judicial circuit in the city of Sioux Falls
the county of Minnehaha and State of South Dakota; that this a
tion is for divorce upon the ground of desertion, which will mo
fully appear in the plaintiff's complaint, a copy whereof is here
annexed and made a part of this affidavit; that the defenda
Kate H. Andrews cannot after due diligence be found with
51 the State of South Dakota, as will appear by the certificate
the sheriff of Minnehaha county annexed to the origin
summons in this action; that the defendant is a proper party d
fendant in this action and the party against whom the relief in th
complaint is demanded; that the defendant Kate H. Andrews do
not reside in the State of South Dakota and is not a resident of th
said State, and that service of the summons herein cannot be ma
upon her, the said defendant, within the State of South Dako
aforesaid; that defendant does not reside within the State of Sou
Dakota, but is a resident of Boston, in the State of Massachuset
and that she is now temporarily absent from the said State of Ma
sachusetts, and her present place of abode is at 1312 Connectic
avenue, Washington, D. C.; that plaintiff knows the said facts
his own knowledge by reason of having received letters from h
father who resides in Boston of the place of residence of the sa
defendant, and by reason of having heard by letters received fro
Boston, that the said defendant was temporarily absent from the ci
of Boston, and that her present post-office address is No. 1312 Co
necticut avenue, Washington, D. C., and that he learned the sa
facts from a letter from his father Charles H. Andrews, who resid
in the city of Boston, who well knows this defendant and is famili
with all the facts in regard to the residence and present abode
this defendant.

CHARLES S. ANDREWS.

Subscribed and sworn to before me this 19th day of Novemb
A. D. 1891.

FRANK R. SIDWELL,
[SEAL.] *Notary Public, Minnehaha County, S. D.*

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In the Circuit Court Thereof, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff,
vs.
KATE H. ANDREWS, Defendant. } Complaint.

Plaintiff complains of the defendant and alleges:

I.

That the plaintiff now is and for more than ninety days last p
has been a *bona fide* resident in good faith of the State of Sou
Dakota.

II.

That heretofore and on the 13th day of April, A. D. 1887, the plaintiff and defendant intermarried at the city of Boston in the State of Massachusetts, and ever since have been and now are husband and wife.

52

III.

That on or about the first of May, A. D. 1889, the said defendant disregarding the solemnity of her marriage vow wilfully and without cause deserted and abandoned this plaintiff and ever since has and still continues so to wilfully and without cause desert and abandon said plaintiff, and to live separate and apart from him without any sufficient cause or reason and against his will and without his consent.

IV.

Plaintiff further shows that the act aforesaid was committed by the defendant without the consent, connivance or procurement, or previous knowledge of this plaintiff, and that he has in nowise condoned the offense aforesaid.

V.

Plaintiff further shows that there are no children born of the said marriage, and that the desertion aforesaid was without cause and contrary to the wishes of this plaintiff.

Wherefore plaintiff demands judgment that the marriage relations now and heretofore existing between this plaintiff and the defendant may be dissolved; and that plaintiff have such other and further relief as to the court shall seem just and proper.

W. H. STODDARD,
JOHN E. CARLAND,
Attorneys for Plaintiff.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

Personally appeared Charles S. Andrews, who being duly sworn deposes and says: That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same are true of his own knowledge, excepting as to those matters stated therein to be alleged on information and belief, and as to those matters he believes it to be true.

CHARLES S. ANDREWS.

Subscribed and sworn to before me this 19th day of November, A. D. 1891.

FRANK R. SIDWELL,
[SEAL.] *Notary Public, Minnehaha County, S. D.*

53 STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In the Circuit Court Thereof, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs.
KATE H. ANDREWS, Defendant. }

It appearing to my satisfaction by the affidavit of Charles S. drews and the sworn complaint herein that a cause of action e against the defendant Kate H. Andrews, and that the defenda not a resident of the State of South Dakota, and cannot with diligence be found therein, and is a non-resident of said State a resident of the State of Massachusetts, and that her present abo No. 1312 Connecticut avenue, Washington, D. C.:

Now on motion of the plaintiff herein, it is ordered that the s mons herein, a copy whereof is hereto annexed, be served upon said defendant, Kate H. Andrews, by publication thereof in Sioux Falls Weekly Press, a newspaper printed and publishe the city of Sioux Falls in the county of Minnehaha and Sta South Dakota, said newspapers being most likely to give notic said defendant in this action, for six consecutive weeks and th copy of the summons and complaint in this action be forthwith posited in the post-office at Sioux Falls, South Dakota, directe this defendant at No. 1312 Connecticut avenue, Washington, D enclosed in an envelope securely sealed with the postage pre thereon, and that personal service upon the said defendant of a c of the summons and complaint in this action outside of the Sta South Dakota shall be equivalent to the due publication of the s mons in this action.

By the court:

FRANK R. AIKENS, *Judg*

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In the Circuit Court Thereof, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs. } Summons.
KATE H. ANDREWS, Defendant. }

The State of South Dakota to the above-named defendant:

You are hereby summoned and required to answer the compl of the plaintiff in the above-entitled action, which said compl will be filed in the office of the clerk of the circuit court of second judicial circuit of the State of South Dakota, within and the county of Minnehaha, and serve a copy of your answer to said complaint on the subscribers at their office in the city of Si Falls in the county of Minnehaha in said State of South Dak

the said city of Sioux Falls being a place where there is a
54 post-office, within thirty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said complaint within thirty days after the service of this summons upon you, the plaintiff in this action will apply to the court for the relief demanded in the said complaint.

Dated November 19", A. D. 1891.

W. H. STODDARD,
JOHN E. CARLAND,
Attorneys for Plaintiff, Sioux Falls, Minnehaha County, South Dakota.

To the above-named defendant:

Please take notice that the complaint in the above-entitled action was filed in the office of the clerk of the circuit court of the second judicial circuit at Sioux Falls, Minnehaha county, S. D., on the — day of November, 1891.

W. H. STODDARD,
JOHN E. CARLAND,
Pl'ff's Att'ys.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff,
vs.
KATE H. ANDREWS, Defendant.

You will please take notice: That the undersigned have been retained by the defendant in the above-entitled action and appear for the said defendant therein, and demand a copy of the plaintiff's complaint in said action which may be served on the subscribers at their office on Phillips avenue in the city of Sioux Falls, Minnehaha county, State of South Dakota.

Dated January 2nd, 1892.

KEITH & BATES,
Attorneys for Defendant.

To William H. Stoddard and John E. Carland, Esqrs., attorneys for plaintiff.

We admit due and personal service of the within notice of retainer upon us, made at Sioux Falls, S. D., on this 2nd day of January, 1892.

STODDARD & WILSON,
JOHN E. CARLAND,
Attorneys for Plaintiff.

55 STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs. }
KATE H. ANDREWS, Defendant. }

STATE OF SOUTH DAKOTA, } ss:
County of Lake, }

H. H. Keith being first duly sworn deposes and says that he is one of the attorneys for the defendant in the above-entitled action. That this deponent has had sole charge of the preparation of the answer in said action. That this action was brought by the plaintiff against the defendant for the purpose of dissolving the marriage contract theretofore entered into between said plaintiff and defendant. That an order of publication was obtained by the plaintiff in this action and personal service of the summons and complaint therein made on the defendant at the city of Washington, D. C. That the firm of Keith & Bates was employed by the defendant in this action about the first day of January, 1892, by telegram from the defendant, which telegram was followed by a letter. That said firm of Keith & Bates appeared in said action and demanded a copy of the complaint which was thereafter served upon said firm of Keith & Bates. That this deponent immediately after receiving said telegram and letter from the said defendant wrote to the defendant at Washington, D. C., where she then was, for a statement of the case and of the facts constituting her defense to said action. That said defendant replied to said letter and gave a meagre statement of the facts of said case, but not with sufficient fullness and definiteness to enable this deponent to prepare an answer for said defendant in said action. That this deponent replied to said letter and requested her to give a full and complete statement of the facts constituting her defense to said action. That before a reply from said last-mentioned letter was received the time for answering was about to expire, and this deponent applied to this court for an order extending the time to answer in said action for the reason that it had been impossible to get a full and complete statement of the facts of the case to enable this deponent to prepare a proper answer in said action. That such extension was given on the 29th day of January, 1892, extending the time to answer until the 20th day of February, 1892, and that on or about the 18th day of February, 1892, this deponent received from the said defendant a statement of the case, giving the dates, facts and circumstances constituting the several acts of cruelty and other matters of defense set forth in her answer herewith presented. That on or about the 22nd day of February, 1892, in getting ready to draw an answer in said action this deponent discovered that the time fixed in said order extending the time to answer had expired on the 20th day of February, 1892. That this

56 deponent had in mind that said order granted by this court on the 29th day of January, 1892, had extended the time to answer in said action thirty days from that date, and that through inadvertence and mistake a memorandum had been entered upon the papers in the case to the effect that the time for answering in said action would expire thirty days from the 29th day of January, 1892, and that an answer should be drawn at that time; that not only was such a memorandum extered upon the papers in the case but this deponent had it thoroughly fixed in his mind that said order extended the time to answer thirty days and that it would not expire until about March 1st, 1892. That on the 20th day of February, 1892, W. H. Wilson, a member of the firm of Stoddard & Wilson, one of the attorneys for the plaintiff in this action, was in deponent's office talking about the case, and inquired of this deponent whether he intended to serve an answer in the case, and that this deponent told said Wilson that the very next work he did would be to prepare and serve an answer in said action, not thinking and not knowing that the time for answering would expire that day, and that said Wilson made no mention of the fact to this deponent.

And this deponent further says that from the statement of the case made to deponent by the defendant, this deponent verily believes that the said defendant has a good and substantial defence to said action upon the merits; that the reason this affidavit is not made by the defendant herein is that said defendant is now in the city of Washington, D. C., and this deponent has not time to send an affidavit to her for her to swear to in order to make this application within the time limited by the order of the court herein in which to obtain an order to show cause why plaintiff's attorneys should not receive the answer of the defendant in said action. That the reason why an answer in this action was not prepared and served sooner was owing to the fact that deponent was unable to get all the facts and circumstances in the case until about the 18th day of February as hereinbefore stated. That this deponent has used due diligence in obtaining the facts in the case from the defendant and only for the mistake made by this deponent in reference to when the time for answering in said action would expire, as hereinbefore set forth, the defendant would not have been in default. That such inadvertence and mistake on the part of this deponent is no fault of the defendant's, and that in all the correspondence had with her she has a good and meritorious defense and that all of the facts set forth in the answer herewith presented are true.

And this deponent further says that the reason why the answer herein is not verified by the said defendant is that this deponent has not time to send the same to Washington to have the same sworn to by the said defendant in order to present the same upon this application under the order of the court herein granted on the 22nd day of February, 1892, limiting the time to ten days in which to apply to the court for an order for the plaintiff to show cause why the answer of the defendant in said action should not be received by said plaintiff.

57 This deponent further says that the next term of this court to be held in said Minnehaha county, State of South Dakota, wherein this action is now pending, does not commence until the 26th day of April, 1892, and that that is the first term of court at which said action could be tried, and that the plaintiff has suffered no injury, or inconvenience in any way by the mistake of this deponent in not answering on the 20th day of February, 1892.

This deponent further says that immediately upon discovering said mistake as hereinbefore set forth, C. P. Bates, one of the firm of Keith & Bates, attorneys for the said defendant, went to the office of W. H. Stoddard, one of the attorneys for the plaintiff, and informed the attorneys for the plaintiff of said mistake and told them that said defendant's attorneys would like to serve an answer for said defendant in said action. That said Stoddard was absent from the office but that said W. H. Wilson informed said Bates that they could not receive an answer in said action. That this deponent immediately prepared an affidavit and obtained an order from this court staying all proceedings on the part of the plaintiff for ten days in which to obtain an order for the plaintiff to show cause why the defendant should not be allowed to serve an answer in said action; that said order was obtained from the judge of this court on the train at Sioux Falls while said judge was on his way from the city of Canton, where he resides, to the city of Madison, in Lake county, to attend a term of court. That this deponent saw Mr. Stoddard and told him that he should be obliged to get an order staying proceedings until he could move the court to allow the defendant to serve her answer in said action and afterwards showed said Stoddard said order granted by the court staying proceedings.

This deponent further says that since preparing the answer which is hereto annexed he has offered to serve the same upon W. H. Stoddard, Esq., one of the attorneys for the plaintiff, and that said Stoddard declined and refused to receive the same.

Wherefore, this deponent in behalf of said defendant asks for an order for the said plaintiff to show cause why this defendant should not be allowed to serve her answer in said action.

H. H. KEITH.

Subscribed and sworn to before me this 23rd day of February, 1892.

FRANK R. AIKENS,
Circuit Judge, 2nd Jud. Cir., S. D.

Upon the annexed and foregoing affidavit of H. H. Keith, the annexed proposed answer of the defendant in said action, the summons, complaint, and upon all the papers, files and proceedings taken and had in said action, let the plaintiff show cause be-
58 fore this court at the court-house in the city of Flandreau, in Moody county, State of South Dakota, on the first day of March, 1892, at the hour of two o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, why the said defendant in this action should not be allowed to serve and file her answer

in said action, and why the said defendant should not have such other, further or different relief as she may show herself entitled to upon the hearing of this order, and in the meantime and until this order is heard and determined all proceedings on the part of the plaintiff are stayed.

Dated this 23 day of February, 1892.

By the court:

FRANK R. AIKENS, *Judge.*

We admit due and personal service of the within papers upon us made at Sioux Falls, S. D., on this 24th day of February, 1892.

W. H. STODDARD,
JOHN E. CARLAND,
Attorneys for Plaintiff.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs.
KATE H. ANDREWS, Defendant. }

The defendant in the above-entitled action for answer to the plaintiff's complaint in said action,

1. Denies that the plaintiff now is or ever has been a *bona fide* resident in good faith of the State of South Dakota; but alleges that the plaintiff is and at all of the times mentioned in the complaint in this action was a resident of the city of Boston in the State of Massachusetts, and that said plaintiff came to the State of South Dakota for the express purpose of procuring a divorce from this defendant, and not otherwise.

2. The defendant admits that the plaintiff and defendant intermarried on the 13th day of April, 1887, at the said city of Boston in the State of Massachusetts, and ever since said time have been and now are husband and wife as alleged in paragraph two of said complaint.

3. This defendant denies paragraph three of said complaint and each and every allegation therein contained. And this defendant expressly denies that she ever deserted and abandoned the plaintiff as alleged in said paragraph three, or otherwise.

59 4. This defendant denies paragraph four of said complaint and each and every allegation therein contained.

5. Defendant admits that there are no children living of the issue of said marriage, but alleges that there was one child born to plaintiff and defendant, the issue of said marriage, which child died on or about the 13th day of January, 1889.

6. This defendant further answering says that during all of the time that this defendant lived and cohabited with said plaintiff she conducted herself with propriety and managed the household affairs of her said husband with prudence and economy and at all times treated her said husband with kindness and forbearance, and was at

all times true and loyal to her marriage vows and was a faithful and affectionate wife to the said plaintiff, but that the said plaintiff, disregarding his marriage vows, within two or three months after their said marriage commenced a systematic course of unkind, harsh and tyrannical conduct towards this defendant, which course of conduct on his part continued with very slight intermissions until this defendant was obliged to leave said plaintiff and live with her friends as hereinafter set forth.

7. That the said plaintiff is a man of depraved character, of coarse, brutal and violent passions, ungovernable temper, intemperate habits and greatly addicted to the use of intoxicating liquors, and that since their said marriage as aforesaid the said plaintiff has treated this defendant in a cruel, brutal and inhuman manner and has been guilty of extreme cruelty towards this defendant, frequently striking and beating her and frequently addressing to her the most opprobrious epithets, foul language, and threats of personal violence, and that the said plaintiff's entire course of conduct towards the *plaintiff*, with rare intervals, has been since within two or three months after their said marriage as aforesaid uniformly brutal and abusive, so that it became entirely unsafe for this defendant to live with said plaintiff as hereinafter more fully set forth.

8. That about the first of September, 1888, at the city of Boston, Massachusetts, where they then resided, as defendant was preparing to go out driving, the plaintiff seized her parasol and struck this defendant a violent blow across the stomach, breaking the parasol, at the same time cursing this defendant and using foul, profane and abusive language to her, that at said time this defendant was in a delicate state of health, it being about two weeks prior to the birth of their said child.

9. That after the birth of their said child the said plaintiff continued to pursue a systematic course of abuse of this defendant refusing to allow her to call upon her friends and acquaintances and would not permit her to see them or receive calls from them, and frequently locked this defendant out of her room, took away her clothing, and addressed to her the most obscene, profane, violent and abusive language; and that the said plaintiff continued this course of conduct and his cruel, brutal and inhuman treatment of this defendant until the death of their said child, which occurred on January 13th, 1889.

10. That about two weeks after the death of their said child as aforesaid, the said plaintiff and this defendant went on a trip to Europe, and that during all of the time they were away on said trip the plaintiff drank to excess frequently becoming drunk, boisterous and disorderly, and treated this defendant in such a cruel, brutal, inhuman and outrageous manner that she became afraid for her life and was frequently obliged to call upon strangers for protection from the acts of violence of her said husband.

11. That at the city of Nice, in France, the plaintiff became intoxicated and abused this defendant, repeatedly striking her in the face and otherwise treated her in a cruel and inhuman manner, to such an extent as to attract the attention of the proprietor and guests at

the hotel where they were stopping, and refused to discontinue his ill treatment and abuse of this defendant until he was obliged to do so through the interference of the proprietor.

12. That while they were stopping at a hotel in the city of Milan the said plaintiff put this defendant out of her room, kept her clothes away from her, addressed foul, profane and abusive language to her, and otherwise treated her in a cruel, brutal and inhuman manner, so that this defendant was obliged to appeal to the proprietor of the hotel for protection from the cruelty and abuse of the plaintiff.

13. That at Shaffhausen, in Switzerland, the said plaintiff struck and cursed this defendant and otherwise abused her and acted in a brutal and disorderly manner, so that the guests at the hotel where they were stopping made complaint of his conduct and threatened to leave the hotel if he was allowed to remain, and on account of his conduct he was requested by the proprietor to leave the hotel; and that such course of conduct continued during their entire stay in Europe.

14. That after the return of plaintiff and defendant from Europe the said plaintiff continued his ill treatment and abuse of the defendant until she became sick and was obliged to leave home and go to the city of Washington for medical treatment where she remained for a period of about six weeks. That after her return home the plaintiff continued his ill treatment and abuse of her, frequently striking and cursing her and using foul and indecent language to her, and that said plaintiff would remain away from home at night until nearly morning when he would come home in an intoxicated condition and would strike, curse and otherwise abuse this defendant, and during said time refused and neglected to provide for her the necessaries of life although he had the ability so to do.

15. That by reason of the conduct on the part of the plaintiff toward this defendant as hereinbefore set forth and of his ill treatment and abuse of this defendant as aforesaid and his total neglect of her, this defendant's health again became seriously impaired and undermined, and that the plaintiff's cruel and inhuman treatment
61 of this defendant and his brutal and outrageous conduct toward her rendered it unsafe for this defendant to live longer with the said plaintiff or remain within reach of his violence, and that about the first of May, 1890, she was obliged to leave the house of said plaintiff and go to her friends and that since said time she has not dared to return to said plaintiff or to live with him.

16. That since this defendant was obliged to leave the plaintiff as aforesaid and live separate and apart from him, which was without any fault or omission of duty on her part but was caused solely by the continued acts of violence and brutal conduct of the plaintiff toward this defendant which rendered it dangerous and unsafe for her to longer live with him or near him, the said plaintiff has employed detectives and other persons to constantly follow this defendant for the express purpose of annoying and harrassing her and of humiliating her before her friends and the public, and by such means to cast reflections upon her character.

17. That by reason of the conduct on the part of the plaintiff

toward this defendant as hereinbefore set forth and of his cruel, brutal and inhuman treatment of her as aforesaid, and of his neglect and failure to provide, maintain and care for this defendant as aforesaid, this defendant has suffered grievous bodily injury and grievous mental suffering, to such an extent that her health has become seriously impaired and undermined.

18. And this defendant further answering says that she is informed and believes and charges the truth to be that the said defendant, disregarding the solemnity of the marriage vow, hath, since the marriage of this defendant with the plaintiff as aforesaid and especially during the years 1889, 1890 and 1891, committed adultery at divers times, with various women whose names are to this defendant unknown, at divers places in the city of Boston in the State of Massachusetts; that about the first day of April, 1890, the plaintiff informed this defendant that he was going to the city of New York to be gone about a week, and thereupon left their house in Boston where they were then residing and was absent for about one week, this plaintiff supposing at the time that he was in the city of New York, but that this defendant has ascertained, since the time she was obliged to leave the plaintiff as hereinbefore set forth, that the said plaintiff spent the entire time in different houses of prostitution in the city of Boston aforesaid consorting with lewd women and prostitutes; and this defendant says that she is informed and believes and charges the truth to be that at different times during said week the plaintiff committed adultery with various women whose names are to this defendant unknown at different places and houses of prostitution in said city of Boston.

19. This defendant further says that she is informed and believes and charges the truth to be that in the year of 1890 and soon after she had returned from the city of Washington where she had been for medical treatment as aforesaid, the plaintiff spent a large portion of his time in different houses of prostitution in said city of
62 Boston in company and consorting with lewd women and prostitutes and that during said time at divers times and at different places and houses of prostitution the exact location of which are to this defendant unknown the said plaintiff committed adultery with various women whose names are to this defendant unknown.

20. This defendant further alleges that she was wholly and entirely ignorant of the commission of the aforesaid acts of adultery by said plaintiff, or any of them, until after she was obliged to leave the house of the plaintiff as hereinbefore set forth, and that she has not cohabited with the plaintiff since the discovery thereof, and that such adultery was committed by said plaintiff without the previous knowledge, consent, connivance, privity or procurement of this defendant.

21. This defendant further answering says that the plaintiff, disregarding his marriage vow and his duties as a husband toward this defendant, has been for more than three years last past, guilty of habitual intemperance, and that during said time the plaintiff has been almost constantly under the influence of intoxicating

liquors and has used intoxicating liquors to such an extent as to disqualify him during almost the entire time from properly attending to his business, and that by reason of the same this defendant has suffered great mental anguish.

22. This defendant further answering says, that for about six months prior to the time when she was obliged to leave the house of the plaintiff as hereinbefore set forth the said plaintiff entirely neglected to furnish and provide for this defendant the necessaries of life and did not furnish her with money with which to procure the same, and did not furnish her with suitable support and maintenance, although he had the ability so to do, he, during all of said time, being in receipt of a large income and having at his disposal large sums of money and abundant means for the support and maintenance of himself and family; and that during all of the time since this defendant was obliged to leave the house of the plaintiff and live separate and apart from him as hereinbefore set forth the plaintiff has utterly failed and neglected to care for or provide for this defendant, and has refused to provide for her support and maintenance, although he had abundant means so to do; and that this defendant has been and is now entirely dependent upon her own labor and the charity of her friends for her support, having no property of her own from which she receives any income.

23. This defendant further alleges that the plaintiff is a man of large means, in receipt of a large income which according to the best knowledge and belief of this defendant, exceeds the sum of ten thousand dollars a year.

24. This defendant further alleges that she has no money or property of any kind or description with which to pay the expenses of this suit, employ counsel or upon which to support herself during the pendency of this action; that it will require the testimony of a large number of witnesses residing at different places in
63 Europe, in the city of Boston, New York, and Washington, and that the testimony of said witnesses will have to be principally taken by depositions and that the procuring of said testimony and the preparation and trial of said cause will be attended with large expense.

25. This defendant further answering alleges that by reason of the facts hereinbefore set forth the plaintiff in this action is not entitled to the relief prayed for in the complaint in this action, and that this court has no jurisdiction to grant the same.

Wherefore this defendant demands judgment against the plaintiff:

1. For a suitable and proper sum to be paid by the plaintiff, to this defendant under the order and direction of this court for her counsel fees, the expenses of this suit, and for her support and maintenance during the pendency of this action.

2. That the plaintiff's complaint be dismissed with costs.

3. That this defendant have such other, further or different relief as she may be entitled to upon the trial of this action.

KEITH & BATES,
Attorneys for Defendant.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

H. H. Keith, being duly sworn, says he is one of the attorneys for the defendant in the within-entitled action; that he has read the annexed and foregoing answer and knows the contents thereof and that the same is true to the best knowledge, information and belief of this deponent; that the reason that this verification is not made by the defendant herein is that said defendant does not reside in and is not now within said Minnehaha county where the defendant's said attorney resides.

H. H. KEITH.

Subscribed and sworn to before me this 23rd day of February, 1892.

R. H. WARREN,
[SEAL.] *Notary Public, South Dakota.*

I admit due and personal service of the within answer upon me made at Sioux Falls, on this 1st day of March, 1892.

W. H. STODDARD,
Attorney for Plff.

64 STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs. }
KATE H. ANDREWS, Defendant. }

CITY OF WASHINGTON, } ss:
District of Columbia, }

Kate H. Andrews being first duly sworn deposes and says: that she is the defendant in the above-entitled action, and is the wife of the plaintiff herein. That a short time prior to January, 1892, this deponent was served in the city of Washington, D. C., with a copy of the summons and complaint in this action. That said complaint among other things alleged that the plaintiff was a *bona fide* resident of the State of South Dakota and had been for ninety days prior to the commencement of said action; and further alleged that this deponent had deserted and abandoned the plaintiff and prayed that the marriage relations existing between the plaintiff and this deponent be dissolved. That this defendant very shortly thereafter employed the firm of Keith & Bates, attorneys-at-law residing at the city of Sioux Falls, State of South Dakota, to appear for her and defend said action, and that this deponent shortly thereafter prepared a statement of the facts constituting her defense and caused the same to be sent to said firm of Keith & Bates to aid them in preparing her said answer in this action. That said answer was afterwards prepared and verified by H. H. Keith one of said firm of Keith & Bates, for the reason, as this deponent is informed by

her said attorneys and verily believes, that there was not sufficient time to mail said answer to this deponent for verification before the time for service of the same would expire. That afterwards said firm of Keith & Bates mailed said answer so drawn and verified as aforesaid to this deponent. That this deponent has read said answer and knows the contents thereof and that all of the allegations of said answer are true to the knowledge of this deponent, except as to matters therein stated on information and belief, and as to those matters she believes it to be true; and this deponent here refers to said answer served in this action and makes the same a part of this her affidavit in all respects the same and with the same force and effect as if the said answer were set forth verbatim herein.

This deponent further says that she has no separate estate or property of any kind whatever and is entirely dependent upon her relatives and friends for support. That this deponent has never received a dollar from the plaintiff in this action since she was obliged to leave him on the 7th day of May, 1890, as set forth in her answer in this action. And this deponent further states that the said plaintiff has not furnished her with any means whatever of any kind towards her maintenance or support or otherwise, since the said 7th day of May, 1890, and that since said time this deponent has been without any money or means of support except what has been given her by friends and relatives for support and is now absolutely without means and has no way to procure any means except through the kindness of relatives and friends as aforesaid. That this deponent has neither money nor means to support herself, or to pay counsel to defend this action.

This deponent further says that she desires to make her defense to said action upon the trial thereof, and that in order to enable this deponent to make such defense she will have to procure the testimony of a large number of witnesses, some in France, some in Switzerland, some in Germany, and a number in the city of Boston, Massachusetts, and other places all of which testimony is material to her defense in this action as she is advised by her said counsel after having made a full and complete statement of the facts which she expects to prove by each of said witnesses, and verily believes to be true.

This deponent further says that during the time the plaintiff and this deponent lived together as man and wife the plaintiff had unlimited means, spent large sums of money for himself and received a large income, and that the said plaintiff has at the present time an income of not less than six thousand dollars a year, and has sufficient means and resources to provide for and take care of this deponent and not allow her to be thrust on the charity of her friends and relatives for support; that the said plaintiff has means to provide any sum which the court may award in this action for the support and maintenance of this deponent, as well as for counsel fees and necessary expenses to enable her to carry on and defend this action; that the sum of one thousand dollars will be a reasonable

sum to be allowed by the court to this deponent for counsel fees and expenses of testimony in defending this action.

This deponent therefore prays an order of this court granting her a sufficient sum for her maintenance and support during the pendency of this action, and also such further sum as may be necessary to pay her counsel fees and to procure testimony and do other necessary things to enable her to make her defense to this action; and for such other and further relief in the premises as to the court may seem meet.

KATE H. ANDREWS.

Subscribed and sworn to before me this 29th day of March, 1892.

GOODWIN Y. ATLER,
Notary Public.

[SEAL.]

66 STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs.
KATE H. ANDREWS, Defendant. }

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

H. H. Keith being first duly sworn deposes and says that he is one of the attorneys for the defendant in the above-entitled action. That from the statement of the case made to deponent by the defendant in this action this deponent verily believes that the said defendant has a good and substantial defense to the cause of action as set forth in the complaint in this action, upon the merits. That this deponent is conversant with the facts set forth in the defendant's answer herein. That all the allegations set forth in the defendant's said answer are necessary to be proved upon the trial of this action in order for the defendant to establish her defense to said action. That this deponent is advised by the said defendant that the witnesses by whom she can prove the allegations of her said answer reside in France and Germany and in the city of Boston, Massachusetts and in other places in the United States. That said defendant has stated to this deponent what she expects to prove by each of said witnesses residing at the various places set forth in order to establish her defense and this deponent has advised the said defendant that it is necessary and material to examine said witnesses. That in order to examine said witnesses and to procure their testimony their depositions will necessarily have to be taken and it will necessarily involve a large expense in taking the same in foreign countries and in the United States.

This deponent further says that he is informed by the said defendant that she has no money or property of any kind to pay for the procuring of said testimony and taking the depositions of said

witnesses, or to make any preparation for the trial of said action that this deponent believes it will require at least one thousand dollars to obtain the necessary testimony and to make the necessary preparations for the trial of this action so that the same can be properly tried upon the merits. This deponent further says that the plaintiff in this action is now in the city of Sioux Falls and has been here for some time; that this deponent is informed and believes and charges the truth to be that the said plaintiff during the time he has been in Sioux Falls has spent large sums of money and is apparently a man of means; that he has stated to various persons in the city of Sioux Falls that he owned large property in Boston, Mass., and has boasted of his wealth, and that the amount of money at his command is limited only by his disposition to spend the same.

This defendant further says that terms have been imposed upon the defendant in this action upon the service of her answer
67 herein, the same being ten dollars, which this deponent paid out of his own pocket, and has not been reimbursed for the same by the defendant or any other person. That this deponent is credibly informed by the friends of said defendant that she has no money or property or means of any kind with which to procure the testimony in this case or to properly prepare this action for trial, and that she is entirely dependent upon her friends for support.

H. H. KEITH.

Subscribed and sworn to before me this 2nd day of April, 1892.

[SEAL.]

R. H. WARREN,
Notary Public, S. D.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs.
KATE H. ANDREWS, Defendant. }

MINNEHAHA COUNTY, ss:

Charles S. Andrews being duly sworn, deposes and says: That he is the defendant in the above-entitled action; that he has read the affidavits of H. H. Keith and Kate H. Andrews and knows the contents thereof; that the statements therein made to the effect that deponent has property or an income of any amount are absolutely and unqualifiedly false. That deponent has never at any time stated to any person in the State of South Dakota, or elswhere, that he had an income, or property either in South Dakota or the State of Massachusetts; and deponent alleges the fact to be that he has no income whatever of his own and no property whatever of his own. That the money which is required to pay living expenses of deponent is wholly received from deponent's father, Mr. Charles H. Andrews, of Boston, Mass. That at the time of deponent's marriage to defendant, Kate H. Andrews, deponent was the owner of the residence

property known as number 381 Commonwealth avenue, in the of Boston, which was worth and of the value of thirty-eight sand dollars and upon which said property there was an in brance of thirty thousand dollars; that deponent's father, Charles H. Andrews, furnished said house complete at a cost of a twenty thousand dollars, and deponent and defendant occupied house as a residence. That a few days after the marriage of nent to defendant, said deponent conveyed all of his right, titl interest in and to said property known as number 381 Commonw avenue, aforesaid, to said Kate H. Andrews, and said property the property then or since owned by deponent, and since the ti the desertion of this deponent by said defendant in May, 1890, defendant has received the rental of said property, which has of the value of forty-five hundred dollars per annum.

That in the month of May, 1890, said Kate H. And
68 instituted proceedings in the probate court of the coun Suffolk, State of Massachusetts, against deponent for the pose of obtaining a separate maintenance from deponent. That proceedings were thereafter had in said action that said probate ordered and adjudged that said deponent, Charles S. Andrews, the defendant, Kate H. Andrews, the sum of one hundred dollar month for her support, whereupon deponent feeling aggrieved by judgment and decree of said probate court, appealed to the sup court of the city of Boston, State of Massachusetts, from said judgm and while said appeal was pending in said superior court, it stipulated and agreed by and between the attorneys for Kat Andrews and the attorney for deponent in said proceeding th consideration of the conveyance by this deponent to said Kat Andrews — all his interest as tenant by curtesy in and to the prop known as number 381 Commonwealth avenue, in the city of Bo and of all of deponent's right, title and interest in the furnitu said building or residence contained, then that the appeal of deponent from the judgment rendered in the probate court sh be sustained and said judgment of the probate court vacated an aside. That this deponent in pursuance of said agreement conveyed his interest in the land and property known as nu 381 Commonwealth avenue to Marcus Morton, Jr., at the reque said Kate H. Andrews and for her benefit; and also the furni and chattels in said house, this being the only way under the of the State of Massachusetts that deponent as the husband of H. Andrews could convey his property to her. That this con ance was made to Marcus Morton, Jr., at the request of Kate H. drews and her attorneys and said Kate H. Andrews has now exclusive ownership and control of said property, which is all property, either real or personal which this deponent has owne any time since his marriage to the defendant.

That the truth of this affidavit so far as the proceedings in probate and superior courts of Boston are concerned, will more f and at large appear by an exemplified copy of the said proceedi hereby referred to and made a part of this affidavit.

Deponent further deposes and says that said Kate H. Andrews

no testimony whatever that she can obtain in Europe as to any alleged misconduct on the part of this deponent towards said defendant, as alleged in defendant's answer in this action, which deponent has heard read and hereby declares to be false in every particular so far as it seeks to charge this deponent with the offenses therein alleged. That deponent can name no person on the continent of Europe or in Great Britain who ever saw or heard any conduct or speech on the part of this deponent as charged in defendant's answer.

And deponent further says that the large sums of money spent by the defendant as the wife of this deponent during their married life, and the whole thereof, were given to this deponent by his father, Charles H. Andrews, and upon the refusal of deponent's father to contribute to the extravagance of said defendant, said defendant deserted said deponent as alleged in his complaint in this action.

69

That it was agreed between the attorneys of the deponent and the said defendant at the time of the sustaining of deponent's appeal in the superior court, in Boston, that the conveyance of the property hereinbefore mentioned, should be in full satisfaction of all demands upon this defendant for support by the said defendant.

CHARLES S. ANDREWS.

Subscribed and sworn to before me this 8th day of April, 1892.

FRANK R. SIDWELL,

[SEAL.] *Notary Public, Minnehaha Co., So. Dak.*

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In the Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs.
KATE H. ANDREWS, Defendant. }

COMMONWEALTH OF MASSACHUSETTS, } ss:
County of Suffolk, }

Personally appeared Charles H. Andrews who being first duly sworn doth depose and say:

That he is the father of the plaintiff in the above-entitled action, and that he is familiar with all the facts contained therewith; that he has read the complaint herein, and has also read the answer sworn to by H. H. Keith in this action.

That on or about the 7th day of May, A. D. 1890, this defendant wilfully and without any cause whatever deserted this plaintiff in the city of Boston and the State of Massachusetts, where the plaintiff and defendant then resided; that at the time of the said desertion, plaintiff and defendant were living in a house at No. 381 Commonwealth avenue in the city of Boston which this deponent had purchased for his son, this plaintiff; that after the marriage of his son with the said defendant, and after the purchase of the said

house, this deponent furnished the said house throughout at an expense of about $20,000; that he paid for the said house the sum of $38,000, $8,000 thereof in cash and the balance secured by a mortgage on the said property; that the actual value of the said house at the present time is at least $45,000, and that the house with the furniture therein is worth at the least calculation $58,000.

That subsequent to May 7th, A. D. 1890, the defendant after her said desertion of the plaintiff, as aforesaid, commenced pro-
70 ceedings in the probate court in the city of Boston against this plaintiff, asking for an order compell*ed* him to contribute to her maintenance and support, and that thereafter and on or about the 6th day of October, A. D. 1890, she at her own instance withdrew said proceedings, and at said time this plaintiff and this deponent caused to be turned over to this defendant, the house and furniture at No. 381 Commonwealth avenue, aforesaid, subject to the mortgage of $30,000 thereon which the defendant assumed and agreed to pay, and in consideration thereof, it was then and there agreed by and between the plaintiff and defendant, which said agreement was reduced to writing, that this defendant should withdraw the proceedings aforesaid, which would release this plaintiff from all liability for her support, release him from all obligations which she had incurred since April 28th, A. D. 1890, and that also, in consideration thereof she would forever refrain from making any further demand or claim upon this plaintiff for her support or maintenance whatever, and that at the time that said agreement was made this plaintiff turned over to this defendant and this defendant received, the house and furniture aforesaid; that every dollar paid for the said house and furniture was paid by this deponent, and that the title to the said house was placed in the name of the defendant for the reason that at said time the plaintiff was not of age and said house and furniture was purchased by this deponent for a home for plaintiff and defendant and that defendant never in any way contributed a dollar towards the payment of the said house and furniture, aforesaid; that at the time of the making of the agreement, aforesaid, plaintiff still retained his curtesy interest in said house and that in consideration of his transferring to defendant his curtesy interest as aforesaid and of giving to the said defendant a bill of sale of the furniture, all of which the defendant at time received from plaintiff and this deponent, the plaintiff entered into the agreement aforesaid; that defendant has received at the least calculation the sum of $20,000 from this plaintiff by means of the house and furniture aforesaid since the 7th day of May, A. D. 1890, and that she has received all the money and property that the plaintiff was at that time possessed of, he having expended all his patrimony in maintaining the house, aforesaid, and the family of this defendant and that to the knowledge of this deponent the said Charles S. Andrews has no property of any kind whatever, either in his possession or in expectancy.

That this deponent was present at the time of the examination of this defendant in the proceedings before the probate court in the city of Boston and State of Massachusetts, aforesaid, and that upon

the said examination this deponent heard this defendant, the said Kate H. Andrews, testify that of her own knowledge, she knew that this plaintiff Charles S. Andrews had no property or means of support and that every dollar that she had received, or would receive, would come direct from Charles H. Andrews, this deponent; that to the knowledge of this deponent the said Charles S. Andrews has no means of support whatever, and that the allegation in the affidavit of H. H. Keith and in the affidavit of Kate H. Andrews, stating that this plaintiff is a man of ample means and has an
71 income of $6,000 is false and untrue in every particular and is so known to be by the defendant Kate H. Andrews.

Deponent further says that the said Charles S. Andrews is entirely dependent upon him for support and that since his marriage with this defendant, he has to the knowledge of this deponent spent upon this defendant in various ways more than $30,000 and that every dollar that the said Charles S. Andrews had has been expended by him, and that this defendant at the time of her separation took with her silverware and jewels which had been purchased by the said Charles S. Andrews of the value of at least $12,000, and that the said Kate H. Andrews has had and received all of the said money since she married this plaintiff, and that at the time of her marriage she had no property whatever of any kind.

Deponent further says that he has furnished and sent to this plaintiff all the money that he has had since he came to Dakota and that the whole amount expended by the said Charles S. Andrews this plaintiff, is known to this deponent and the affidavit of H. H. Keith that plaintiff during the time he has been in Sioux Falls has spent large sums of money and is apparently a man of means, is false and known by the said Keith to be false.

Deponent further says that he knows of a fact that the said Charles S. Andrews is indebted in the city of Boston in the sum of at least $23,000 to the personal knowledge of this deponent.

CHAS. H. ANDREWS.

Subscribed and sworn to before me this eighth day of April, A. D. 1892.

FRANCIS PEABODY, JR.,
Notary Public.

[SEAL.]

Commission expires Nov. 24th, 1893.

STATE OF SOUTH DAKOTA, }
County of Minnehaha, } ss:

In the Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs.
KATE H. ANDREWS, Defendant. }

COMMONWEALTH OF MASSACHUSETTS, }
County of Suffolk, } ss:

Blanche Andrews being duly sworn deposes and says: That sh
is the sister of the plaintiff in the above-entitled action; that sh
well knows the defendant Kate H. Andrews; was with the plaint
and defendant at Schaffhausen in Switzerland at the time mention
in the defendant's answer, and that she was with plaintiff an
72 defendant in the city of Nice in France at the time mention
in defendant's answer, and at the time that plaintiff and d
fendant were traveling in Europe and was present with the plaint
and defendant nearly the whole of said trip; that she well kno
that this defendant cannot, or at least could not at the time me
tioned, speak a word of any language excepting the English languag
and that the people at the hotel where they stopped could none
them speak English; that at the times mentioned there was nothi
transpired as alleged in the defendant's answer; that plaintiff d
not strike or curse this defendant or abuse her in any way, and th
at neither of the places aforesaid was the plaintiff guilty of any cru
or inhuman treatment of this defendant, and that to the knowled
of this deponent there are no witnesses in France, Germany, Swi
erland or any European country that know anything in relation
the facts in this case, or have any knowledge thereof whatever, an
that the statement in the defendant's affidavit that she will requi
witnesses from the continent of Europe, is without foundation and
untrue, and that defendant's sister was present with her during th
whole of the time in which she was traveling in said countries, an
knows all that transpired.

BLANCHE ANDREWS.

Subscribed and sworn to before me this eighth day of April, A.
1892.

FRANCIS PEABODY, JR.,
[SEAL.] *Notary Public.*

Commission expires Nov'r 24th, 1893.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In the Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs.
KATE H. ANDREWS, Defendant. }

COMMONWEALTH OF MASSACHUSETTS, } ss:
County of Suffolk, }

George H. Andrews, being duly sworn deposes and says: That he is the brother of the plaintiff in the above-entitled action; that he well knows the defendant Kate H. Andrews, was with the plaintiff and defendant at Schaffhausen in Switzerland at the time mentioned in defendant's answer, and that he was with plaintiff and defendant in the city of Nice in France at the time mentioned in defendant's answer, and at the time that plaintiff and defendant were traveling in Europe and was present with the plaintiff and defendant nearly the whole of said trip; that he well knows this defendant cannot, or at least could not at the times mentioned, speak a word of any
73 language excepting the English language, and that the people at the hotel where they stopped could none of them speak English; that at the times mentioned there was nothing transpired as alleged in the defendant's answer; that plaintiff did not strike or curse this defendant or abuse her in any way, and that at neither of the places aforesaid was the plaintiff guilty of any cruel or inhuman treatment of this defendant, and that to the knowledge of this deponent there are no witnesses in France, Germany, Switzerland or any European country that know anything in relation to the facts in this case, or have any knowledge thereof whatever, and that the statement in the defendant's affidavit that she will require witnesses from the continent of Europe, is without foundation and is untrue, and that defendant's sister was present with her during the whole of the time in which she was traveling in said countries and knows all that transpired.

G. H. ANDREWS.

Subscribed and sworn to before me this eighth day of April, A. D. 1892.

FRANCIS PEABODY, JR.,
Notary Public.

[SEAL.]

Commission expires Nov'r 24th, 1893.

SECOND JUDICIAL CIRCUIT, }
State of South Dakota. }

In Circuit Court, County of Minnehaha.

CHARLES S. ANDREWS }
vs. } Order.
KATE H. ANDREWS. }

This cause coming on to be heard upon the motion of defendant for temporary support, expenses and attorneys' fees, and the same being supported by the affidavits of said defendant and H. H. Keith, her counsel, and opposed by the affidavits of C. S. Andrews, C. H. Andrews, G. H. Andrews and Blanche Andrews, and the respective attorneys, H. H. Keith, Esq., arguing for, and John E. Carland, Esq., and W. H. Stoddard, Esq., in opposition, and the court having duly considered the same and being advised does hereby order,

First. That the motion for support be denied for the reason that it appears that the defendant is not in need thereof, she having fully settled with the plaintiff and released him for a valuable consideration therefor.

Second. That the plaintiff pay to the defendant or her attorneys the sum of three hundred dollars ($300) to defray expenses in obtaining evidence and preparing to try the issues of this case.

Third. That the plaintiff pay to the defendant's attorneys, Messrs. Keith & Bates, the sum of one hundred and fifty dollars ($150) as counsel of att'ys' fees.

74 Fourth. That the said $300 and $150 be paid as directed within fifteen days from the date of the service of this order (which is ordered served forthwith).

Fifth. That the foregoing sums are not to be considered or construed as being in full or final, but additional sums may be allowed by the court or referee as the exigencies of the case may require.

By the court:

FRANK R. AIKENS, *Judge.*

BOSTON, *April* 22, 1890.

Received of Charles S. Andrews three hundred dollars am't ordered to be paid to me by So. Dakota court in Andrews *v.* Andrews.

$300. KATHERINE H. ANDREWS,
By her attorney, M. F. DICKINSON, JR.

STATE OF SOUTH DAKOTA, }
County of Minnehaha, } *ss:*

In the Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs. }
KATE H. ANDREWS, Defendant, }

Received April 25th, 1892, of Charles S. Andrews by the hand of W. H. Stoddard, the sum of one hundred and fifty ($150) dollars,

being in full for attorneys' fees as provided in the order of the court made by the Honorable Frank R. Aikens in the above-entitled action.

KEITH & BATES,
Defendant's Attorneys.

Filed this 6 day of May, 1892.
ALBION THORNE,
Clerk Circuit Court.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In the Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs.
KATE H. ANDREWS, Defendant. }

Please take notice: That we, the undersigned attorneys for
75 Kate H. Andrews, the defendant in the above-entitled action, do hereby withdraw our appearance for the said defendant, and withdraw our appearance in the said action.

Dated May 5th, A. D. 1892.

KEITH & BATES,
Defendant's Attorneys.

To W. H. Stoddard and John E. Carland, plaintiff's attorneys.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs.
KATE H. ANDREWS, Defendant. }

This action having been duly commenced by personal service of the summons and complaint upon the defendant, and said defendant having duly appeared and answered by Keith & Bates, her attorneys, and said action having been at issue and regularly upon the calendar for the April, A. D. 1892, term of this court, and having been regularly reached in its order, the plaintiff appearing upon the trial in person and by William H. Stoddard and John E. Carland, his attorneys, and the defendant failing to appear upon the trial, aforesaid, and the court having heard the allegations and proofs of said plaintiff, and having considered the same, now upon the complaint and answer and all the papers and proceedings herein the court makes the following findings of fact:

1st. That the plaintiff, Charles S. Andrews, is, and was, for more than ninety days next preceding the commencement of this action, a resident in, and of, the State of South Dakota, in good faith.

2nd. That on the 13th day of April, A. D. 1887, at the city of Boston, in the State of Massachusetts, the plaintiff, Charles S. An-

drews, and the defendant, Kate H. Andrews, were duly married, and were at the time of the commencement of this action, husband and wife.

3rd. That on the first day of May, A. D. 1889, the defendant disregarding the solemnity of her marriage vow, wilfully and without cause deserted and abandoned the plaintiff, and ever since has and still continues so to wilfully and without cause desert and abandon said plaintiff, and to live separate and apart from him without any sufficient cause or any reason and against his will and without his consent with intent him to desert.

4th. That the said wilful desertion so found as aforesaid, was committed by the defendant without the procurement, con-
76 nivance, or collusion of the plaintiff, and without any previous agreement or understanding between the plaintiff and defendant, and without any fault on his part.

5th. That all of the charges and allegations made in the plaintiff's complaint are fully sustained by the evidence of the plaintiff and are not contravened, rebutted or disproved by the evidence of the defendant, and that all of the allegations of the plaintiff are true.

6th. That there are no children born of the marriage between the plaintiff and defendant now living.

I find as conclusions of law: That the plaintiff is entitled to the relief demanded in the complaint, and to a judgment and decree of this court dissolving the marriage heretofore and now existing between the plaintiff and the defendant, and freeing the plaintiff, Charles S. Andrews, and the defendant, Kate H. Andrews, from the bonds of the said marriage and all the obligations, rights and privileges thereof.

Dated at Sioux Falls, this 6th day of May, A. D. 1892.

By the court:

FRANK R. AIKENS, *Judge.*

Filed this 6 day of May, 1892.

ALBION THORNE,
Clerk Circuit Court.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

In Circuit Court, Second Judicial Circuit.

CHARLES S. ANDREWS, Plaintiff, }
vs.
KATE H. ANDREWS, Defendant. }

This action having been duly commenced by personal service of the summons and complaint upon the defendant, and said defendant having duly appeared and answered by Keith & Bates, her attorneys, and said action having been at issue and regularly upon the calendar for the April, A. D. 1892, term of this court, and having been regularly reached in its order, the plaintiff appearing upon the trial in person and by William H. Stoddard and John E. Carland, his

attorneys, and the defendant failing to appear upon the trial, aforesaid and the court having heard the allegations and proofs of said plaintiff, and having considered the same, and having made and filed findings of fact and conclusions of law herein, and being fully advised in the premises:

Now on motion of William H. Stoddard and John E. Carland, attorneys for plaintiff:

It is ordered, adjudged and decreed that the marriage now and heretofore existing between the plaintiff, Charles S. Andrews, and the defendant, Kate H. Andrews, be dissolved, and the same hereby is dissolved accordingly, and the parties hereto are, and each 77 of them is freed from the bonds of said marriage and all the rights, privileges and obligations thereof, the same as if the said marriage had never been contracted, in accordance with and pursuant to the statute in such case made and provided.

Done in open court at the city of Sioux Falls in said circuit this 6th day of May, A. D. 1892.

By the court:

FRANK R. AIKENS, *Judge.*

Attest: ALBION THORNE, *Clerk,*
[SEAL.] By H. B. CARLETON, *Deputy.*

Filed this 6 day of May, 1892.
ALBION THORNE,
Clerk Circuit Court.

EXHIBIT 5, W. R.

HERALD OFFICE, BOSTON, MASS., *June* 24, 1893.

This certifies that C. S. Andrews is an authorized reporter and correspondent for the Boston Herald, at large. Unless previously revoked, this certificate expires on the 31st day of Dec. eighteen hundred and ninety-three at which time it must be returned for exchange.

THE BOSTON HERALD COMPANY,
By FRED E. WHITING, *Clerk.*

No. 56.

EXHIBIT 6, W. R.

BOSTON, *November* 18*th*, 1890.

It is agreed between R. M. Morse, Jr., Esq., counsel for Mrs. C. S. Andrews and F. Peabody Jr. as counsel for C. S. Andrews as follows:

(I.) Mrs. Andrews is to allow her petition in the probate court to be dismissed.

(II.) She is to pay all bills contracted by her since April 28th, 1890, and to agree that she will not make or attempt to make C. S. Andrews liable for any debts hereafter.

(III.) She is to return any of her husband's personal effects o clothing that she may have.

(I.) Mr. Andrews is to allow Mrs. Andrews to have all th
78 furniture belonging in house 381 Commonwealth avenue but Mr. Andrews is to have his books, papers and camera.

(II.) He is to surrender his right of courtesy in premises 381 Com monwealth avenue. Also all property of Mrs. Andrews now in hi possession. Each party to pay his or her own costs.

The two old paintings "Lying in Wait" and "The Last of th Huguenots" are to be returned to Mr. C. H. Andrews to whom the belong.

R. M. M., JR.
F. P., JR.

EXHIBIT 7, W. R.

NEW YORK, *April 22nd*, 1892.

I, Kate H. Andrews, authorize M. F. Dickinson, Jr., my attorne to settle with my husband, Charles S. Andrews as follows:

First. In addition to the $300 paid by Charles H. Andrews yes terday on order of the South Dakota court and a further sum of $15 sent by Charles H. Andrews to my counsel in Sioux Falls Dakota my husband is to pay me the sum of $2,050 when the divorce fo dissertion is obtained against me in the South Dakota court.

Second. Charles H. Andrews is to guarantee the payment of th said $2,050.

Third. M. F. Dickinson Jr. is authorized to execute in my nam the papers necessary to carry out the foregoing agreement.

Fourth. Upon execution of such papers, M. F. Dickinson Jr. i authorized in my name to consent to the granting of divorce for dis sertion in the South Dakota court.

KATE H. ANDREWS.

Witness:
R. C. RATHBONE.

EXHIBIT 9, W. R.

WASHINGTON, D. C.

DEAR MR. ANDREWS: I must be pardoned for taking this liberty in addressing you. Perhaps you will consider it unwarrantable but circumstances over which I have no control urge me to do so, and make a personal appeal to your generosity, as well as humanity. I have made many attempts to help myself pecuniarily speaking— as it was and is a mortification and mental distress to come back upon my father, for my support. He is an old man, who has only his half pay during his lifetime, which ceases entirely at his death, and as you can see, can have nothing
to leave for his children, which must be a great sorrow
79 to him, as it naturally would any parent who cares for his own. At the time of the divorce between your son Charles & myself, I allowed him to obtain it by withdrawing my own defence.

Of course you paid the lawyers' bills, but I personally seemed to be left out and to the mercy of the world. This does not seem fair to a woman who was a good wife to your son, and who became the mother of his child, amid pain, sickness and almost death, to say nothing of other physical ills here and in Europe. It would seem as if I was entitled to some consideration, and should at least have some proper support. You would say I have the house on Commonwealth avenue. So I have but you can see that it is a perfect elephant upon my hands. It was heavily mortgaged as you know and was a handicap to me from the start. It requires money to keep it in order, and I have been unfortunate with tenants, who have either left on non-payment or have swindled me out of the rental. I have not money to carry this house, in fact, I cannot. Perhaps I might suggest or ask you to take it back and give me its equivalent, or some stated sum which would be more of a reliance than the house, itself, as it now stands, under the existing circumstances. You will say probably that I married your son for money. I did not. I did not consider it at all. I was very much attached to him and after our marriage I did all I could for him, in every way, and when I found that he ceased to care for me it made me dissatisfied, and hence the separation and the subsequent divorce obtained by him. Mr. Andrews, I do not wish to distress you or appear mercenary, but I feel I am entitled to what I ask for, that you should take or buy back this house in Boston. I have had untold unhappiness over it, and suffered a great deal in mind. I have sold what jewelry I had to get money enough to keep it in order, and to pay my expenses, attendant on going or coming from Washington to Boston. I know all that you have suffered with your trials, and above all in the loss of your only and idolized daughter, and I beg of you by her memory to do something for me. If she had lived and had been placed as I am, treated unfairly and not with justice, it would break your heart, perhaps more so than had she died, for sometimes living troubles are harder to bear than to bury a loved one. Perhaps could you put yourself in my father's place, he is fast passing on and feels my position most keenly, it has aged him, it wears upon him, and he feels his utter helplessness to leave me protected by such environments as daughters should have. It would lighten his burden and make it less hard to die could he know that I had a competency even a modest one, or the assurance that I had something to depend upon. May I ask you to dwell upon these facts, and let them appeal to your heart and generosity, which has ever been so lavish to your own children, and which has never failed them. I am willing to work to do anything that I am fitted for, and would not hesitate to accept any proper and respectable position, whereby I could better my condition, in fact, I have made the greatest efforts for the past three years, but am still unsuccessful. I make this appeal to you, Mr. Andrews, because it seems right and just that I should, and if you will assist me, you will have my life-long gratitude and you will carry with you here and hereafter the fact that you have not made a mistake, for I promise to do the best I can with what you may give me, and also to make

my future life one of usefulness and be ever grateful and appreciative of any kindness you extend to me. I am a sadder and wiser woman, but my experiences have been bought at a heavy price. If out of your fortune you will help me by at least taking the house off my hands, thereby arranging a price for it, or a sufficient sum in exchange to relieve me of its burden. Your favorable answer to my present appeal will change our whole lives, and I shall never cease to be your debtor.

Most sincerely yours,

KATE HENSHAW ANDREWS,
1312 *Connecticut Ave.*

EXHIBIT 8.

(*Envelope.*)

WASHINGTON, D. C., *Nov.* 13,
3.30 p. m., 1895.

Mr. CHAS. H. ANDREWS,
Suffolk Club,
401 *Beacon St.,*
Boston, Mass.

Personal.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

REGISTRY OF PROBATE.

I, Elijah George, Esquire, register of the probate court within and for the county of Suffolk, hereby certify that John W. McKim, Esquire, whose signature is affixed to the annexed certificate, is the sole presiding judge of said court, duly commissioned and qualified, and that his said certificate is in due form, and entitled to full faith and credit.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, this thirtieth day of March in the year of our Lord one thousand eight hundred and ninety-two.

[SEAL.] ELIJAH GEORGE, *Register.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Probate Court.

I, John W. McKim, Esquire, judge of the probate court within and for the county of Suffolk, hereby certify that Elijah
81 George, Esquire, whose signature is affixed to the annexed certificate and attestation, is the register and proper certifying officer of said court, and has, by law, the custody of the seal and all the records, books, documents and papers of, or appertaining to said court, and that said certificate and attestation are in due form, and entitled to full faith and credit.

In witness whereof, I have hereunto set my hand, this thirtieth

day of March in the year of our Lord one thousand eight hundred and ninety-two.

JOHN W. McKIM,
Judge of Probate Court.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

REGISTRY OF PROBATE.

I, Elijah George, register of the probate court for said county of Suffolk, having by law the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, hereby certify the papers hereto annexed to be true copies of papers appertaining to said court, and on file and of record in the office of said court, to wit: the petition, citation, return of service, decree, claim and reasons of appeal, and final decree being the entire record of said court, in the matter of the separate support of Kate H. Andrews of Boston in said county.

In witness whereof, I have hereunto set my hand and the seal of said court, this thirtieth day of March in the year of our Lord one thousand eight hundred and ninety-two.

[SEAL.] ELIJAH GEORGE, *Register.*

To the honorable the judge of the probate court in and for the county of Suffolk:

Respectfully represents Kate Henshaw Andrews of Boston, in the county of Suffolk, that she is the lawful wife of Charles S. Andrews of said Boston, that her said husband fails, without just cause, to furnish suitable support for her, and has deserted her, and that your petitioner, for justifiable cause, is actually living apart from her said husband.

Wherefore your petitioner prays that said court will, by its order, prohibit her said husband from imposing any restraint on her personal liberty, and make such further order as it deems expedient concerning her support, and will direct an attachment of the property of said Charles S. Andrews in the sum of five thousand dollars to secure the support of your petitioner.

K. H. ANDREWS.

82 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Probate Court.

On the foregoing petition, it is ordered that the sheriff of said county or either of his deputies, give notice to the said Charles S. Andrews to appear at a probate court to be holden at Boston, in said county of Suffolk, on the twelfth day of May A. D. 1890, at ten o'clock in the forenoon, by delivering to him an attested copy of said petition and this order thereon fourteen days at least, before said court, that he may then and there show cause, if any he has, why the prayer of said petition should not be granted.

And in order to secure to the petitioner, and to such children as

may be committed to her care and custody, a suitable support an maintenance, the sheriffs of the several counties, or either of the deputies, are hereby directed to attach, on said petition, the real an personal estate of the said Charles S. Andrews to the amount of fi thousand dollars, conformably to the statute in such case made an provided.

Witness, John W. McKim, Esquire, judge of said court, and th seal of said court, this twenty-eighth day of April in the year on thousand eight hundred and ninety.

ELIJAH GEORGE, *Register.*

To the honorable the judge of the probate court in and for th county of Suffolk:

Respectfully represents Kate Henshaw Andrews of Boston in th county of Suffolk, that she is the lawful wife of Charles S. Andrew of said Boston, that her said husband fails, without just cause, furnish suitable support for her, and has deserted her, and that you petitioner, for justifiable cause, is actually living apart from her sai husband.

Wherefore your petitioner prays that said court will, by its orde prohibit her said husband from imposing any restraint on her pe sonal liberty, and make such further order as it deems expedie concerning her support, and will direct an attachment of the pro erty of said Charles S. Andrews in the sum of five thousand dolla to secure the support of your petitioner.

K. H. ANDREWS.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } ss:

Probate Court.

On the foregoing petition, it is ordered that the sheriff of sa county, or either of his deputies, give notice to the said Charles Andrews to appear at a probate court to be holden at Boston, in sa county of Suffolk, on the twelfth day of May A. D. 1890, at te o'clock in the forenoon, by delivering to him an attested cop
83 of said petition and this order thereon fourteen days at leas before said court, that he may then and there show cause, any he has, why the prayer of said petition should not be granted

And in order to secure to the petitioner, and to such children may be committed to her care and custody, a suitable support an maintenance, the sheriffs of the several counties, or either of the deputies, are hereby directed to attach, on said petition, the real an personal estate of the said Charles S. Andrews to the amount five thousand dollars, conformably to the statute in such case mad and provided.

Witness, John W. McKim, Esquire, judge of said court, and th seal of said court, this twenty-eighth day of April in the year on thousand eight hundred and ninety.

ELIJAH GEORGE, *Register.*

A true copy.
Attest: JOHN H. PAINE,
Assistant Register.

SUFFOLK, ss: BOSTON, *April* 28, 1890.

By virtue hereof I this day attached certain goods and chattels as the property of the within-named Charles S. Andrews, and placed a keeper in charge of the same, and later on the same day I gave notice to said Charles S. Andrews to appear and show cause at court, as herein required by delivering to him in hand an attested copy of this petition, and order.

THOMAS FEE,
Deputy Sheriff.

Sworn to before me—

WM. D. MARTIN,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, ss:

At a probate court holden at Boston, in and for said county of Suffolk, on the twenty-eighth day of July in the year of our Lord one thousand eight hundred and ninety.

On the petition of Kate Henshaw Andrews of Boston, in said county the wife of Charles S. Andrews of said Boston, praying that said court will, by its order, prohibit her said husband from imposing any restraint on her personal liberty, and make such further order as it deems expedient concerning her support.

Due notice of said petition having been given to the said Charles S. Andrews and it appearing to the court that said petitioner, for justifiable cause is actually living apart from her said husband:

84 It is ordered said Charles S. Andrews be and he hereby is prohibited from imposing any restraint on the personal liberty of said petitioner, and that he pay to said petitioner for the support of herself the sum of one hundred dollars forthwith and the further sum of one hundred dollars on the first Monday of each and every month hereafter until the further order of said court, and that the petitioner have the use and enjoyment of the household furniture and other chattels now in the house of said petitioner numbered 381 on Commonwealth avenue in said Boston until the further order of said court.

JOHN W. McKIM,
Judge of Probate Court.

(Reverse side of document:) Kate H. Andrews *vs.* Charles S. Andrews. Petition, citation and decree for separate support. Filed Apr. 28, 1890. Returnable May 12, 1890. Allowed July 28, 1890. Recorded, vol. 632, page 24. For petitioner, —— ——; for respondent, Francis Peabody, Jr., 54 Devon. St.

COMMONWEALTH OF MSSACHUSETTS:

To the honorable the judge of the probate court in and for the county of Suffolk:

Represents Charles S. Andrews of Boston, in the county of Suffolk, that he is the respondent in the petition for separate support of Kate Henshaw Andrews his wife of Boston in the county of Suffolk, that he is aggrieved by a decree of the probate court holden at Boston, in said county of Suffolk, on the twenty-eighth day of July A. D. 1890 whereby said court ordered that said Charles S. Andrews be prohibited from imposing any restraint on the personal liberty of said Kate Henshaw Andrews, and should pay said Kate Henshaw Andrews for the support of herself the sum of one hundred dollars forthwith and the further sum of one hundred dollars on the first Monday of each and every month thereafter until the further order of said court and that said Kate Henshaw Andrews have the use and enjoyment of the household furniture and other chattels now in the house of said Kate Henshaw Andrews numbered 381 Commonwealth avenue in said petition, until the further order of said court.

And he hereby gives notice that he claims an appeal from said decree to the superior court.

Dated the twelfth day of August, A. D. 1890.

CHARLES S. ANDREWS.

(Reverse side of document:) No. 84666. Kate H. Andrews—Charles S. Andrews. Claim of appeal. Filed Aug. 13, A. D. 1890. For appellant, Francis Peabody, Jr., 54 Devonshire St.; for appellee, —— ——.

COMMONWEALTH OF MASSACHUSETTS:

To the honorable the judges of the superior court in and for the county of Suffolk and to Kate Henshaw Andrews, of Boston, in said county of Suffolk; Charles S. Andrews, of Boston, in said county of Suffolk:

Having given due notice at the probate office that he claimed an appeal from the decree of the probate court holden at Boston, in the county of Suffolk, on the twenty-eighth day of July, A. D. 1890, now files in the registry of probate his reasons of appeal, as follows, to wit:

First. Because he has not failed without just cause to furnish suitable support for said Kate Henshaw Andrews.

Second. Because he has not deserted her.

Third. Because said Kate Henshaw Andrews is not actually living apart from her husband for justifiable cause.

Fourth. Because there was no evidence offered by said petitioner at the hearing upon said petition showing or tending to show that said Charles S. Andrews had any funds or property of any kind except the furniture in house numbered 381 Commonwealth avenue, Boston, the use of which furniture is by said decree given to the wife.

Fifth. Because the petition of said Kate Henshaw Andrews on which said decree was made did not allege any funds or property in said Charles S. Andrews.

86 Sixth. Because in point of fact said Charles S. Andrews has no funds with which to carry out the decree of the probate court.

Seventh. Because the evidence at the hearing of said petition did not show that said petitioner was living apart from her husband for justifiable cause.

Eighth. Because the evidence upon the hearing of said petition showed that said petitioner was living an improper life at a place called Narragansett Pier.

Dated the twelfth day of August, A. D. 1890.

CHARLES S. ANDREWS.

(Reverse side of document:) No. 84666. Kate H. Andrews *v.* Charles S. Andrews. Reason of appeal. Filed Aug. 13, A. D. 1890, For appellant, Francis Peabody, Jr., 54 Devonshire St.; for appellee, — —.

COMMONWEALTH OF MASSACHUSETTS, *County of Suffolk,* } *ss:*

Superior Court.

CHARLES S. ANDREWS, App'l't,
—
KATE H. ANDREWS, App'l'ee.

It appearing to the court that, at the request of Kate H. Andrews, Charles S. Andrews has conveyed to Marcus Morton, Jr., his right as tenant by the curtesy in the land and the house thereon numbered 381 Commonwealth avenue, and that he has also transferred to said Marcus Morton, Jr., at the request of said Kate H. Andrews, the furniture and chattels in said house, it is ordered, adjudged, and decreed by consent of the parties that the appeal of said Charles S. Andrews be sustained, and that the decree of the probate court dated July 28th, 1890, be set aside, and that the petition of said Kate H. Andrews to said probate court be dismissed.

By the court:

THEODORE M. OSBORNE, *Ass't Clerk.*

December 12, 1890.

Copy.
Attest: THEODORE M. OSBORNE, *Ass't Clerk.*

87 (Reverse side of document:) 573. F. Peabody, Jr. Kate H. Andrews, petitioner, *v.* Charles S. Andrews, appellant. Copy. Decree. December 12, 1890.
(Endorsed:) We agree that the within decree be entered. R. M. Morse, Jr., for pet'r. Francis Peabody, Jr., for responden.

EXHIBIT A, F. R. S.

(Front cover.)

Registry list, first ward, annual city election, April 19th, 1892.

On first page under Index A, the name of C. S. Andrews appears, as well as numerous others.

On inside of back cover appears:

STATE OF SOUTH DAKOTA, } ss:
City of Sioux Falls, }

We hereby certify that the within is a true and complete list of the voters in the first ward in the city of Sioux Falls, South Dakota, as far as the same are known to us.

Witness our signatures this nineteenth day of April, 1892.

JAMES ROBBINS,
CHARLES CLARK,
GEORGE W. LOWRY,
Board of Registry.

88 EXHIBIT B, F. R. S.

(Front cover.)

City election, South Dakota poll book.

Ward No. 1, city of Sioux Falls, Minnehaha county, South Dakota. Election held on the 19th day of April, A. D. 1892.

Poll book of an election held at Sioux Falls, Minnehaha county, South Dakota, on Tuesday, April 19th, A. D. 1892, at which time James Robbins, Charles Clark and George W. Lowry were judges of election, and the persons named herein voting thereat.

(Page 1.)

Oath of Judges and Clerks.

STATE OF SOUTH DAKOTA, } ss:
County of Minnehaha, }

At a city election held at engine-house, in the county of Minnehaha, South Dakota, on the 19th day of April, 1892, the polls of said election being open at 8 o'clock a. m. of said day, the following oath was taken by the judges and clerks of election:

Then follow the oaths of James Robbins, Charles Clark and George W. Lowry, as judges of said election, and the oaths of Dan. Getty and Frank Kunerth, as clerks of said election.

(Page 2.)

Poll book.

No. —. Names of voters.

Under names of voters on pages 2, 3, 4, 5, 6 and 7 appear the names of voters voting at said election in said first ward to the number of 406, and among the said names at No. 330, appears the name of the said C. S. Andrews.

On the latter pages of the poll book appear the tally-lists and the enumeration of all the votes cast in said ward 1 of said election for mayor, city treasurer, city justice of the peace, police justice and aldermen.

Upon the last page of said poll book appear the official returns of the said election held in ward 1, city of Sioux Falls, Minnehaha county, State of South Dakota, on the 19th day of April, 1892, said returns showing the total number of votes cast for each candidate at said election, and certified to as a true return by James Robbins, George W. Lowry and Charles Clark, judges of election, attested by Daniel B. Getty and Frank Kunerth, clerks of election.

89 And on the sixteenth day of May, A. D. 1900, the supreme judicial court for the Commonwealth ordered that the clerk of the supreme judicial court for said county of Suffolk make the following entry under said case in the docket of said court—exceptions overruled—by its rescript, as follows, to wit:

90 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, May 1900.

In the case of Kate H. Andrews, appellant, *vs.* Annie Andrews, appellee, pending in the supreme judicial court for the county of Suffolk—

Ordered that the clerk of said court in said county make the following entry under said case in the docket of said court, viz:

Exceptions overruled.

By the court:

HENRY A. CLAPP, *Clerk.*

May 16, 1900.

[Endorsed:] 6084. Eq. No. 533. Eq. Supreme judicial court for the Commonwealth. Rescript, Suffolk county. Kate H. Andrews *vs.* Annie Andrews.

91 And on the fourth day of June, A. D. 1900, Jabez Fox, Esquire, entered an appearance as follows, to wit:

92 SUFFOLK, *ss:*

Supreme Judicial Court.

JUNE 4, 1900.

ANNIE ANDREWS, Pl'ff,
v.
KATE H. ANDREWS, D'f't. } No. 6084. Eq.

In the above action I appear for Annie Andrews.

JABEZ FOX,
Tremont B'ld'g, Boston.

93 And on the thirtieth day of June, A. D. 1900, the following decree was entered by the court, to wit:

94 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court, Suffolk County. In Probate.

KATE H. ANDREWS, Appellant,
vs.
ANNIE ANDREWS, Appellee.

Final Decree.

This case came on to be further heard, and now, on consideration thereof and in pursuance of a rescript from the supreme judicial court for the Commonwealth, as appears on record in this cause, it is ordered, adjudged, and decreed that the divorce obtained by Charles S. Andrews in South Dakota is of no force and effect in this Commonwealth, and that his subsequent marriage with Annie Andrews, appellee, was therefore illegal; that said Kate H. Andrews is his lawful widow, and said Annie Andrews is not entitled, as his widow, to administer his estate; that the decree of the probate court appointing her to be administratrix of his estate be reversed and her petition for administration be dismissed.

June 30, 1900.

By the Court:

JOHN NOBLE, *Clerk.*

95 All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have hereunto caused the seal of our said court to be hereto affixed.

Witness Oliver W. Holmes, chief justice of our said supreme judicial court, at Boston, in said county, this eighteenth day
[SEAL.] of July, in the year of our Lord nineteen hundred.

JOHN NOBLE, *Clerk.*

96 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Supreme Judicial Court.

ANNIE ANDREWS, Appellee, Plaintiff in Error,
vs.
KATE H. ANDREWS, Appellant, Defendant in Error.

Assignment of Errors.

Now comes Annie Andrews, the plaintiff in error, and assigns for error in the proceedings and judgment the following, to wit:

First. The court, in ordering her petition for the administration of the estate of Charles S. Andrews to be dismissed on the ground that she was not the widow of said Andrews, failed to give full faith and credit, as required by the Constitution and laws of the United States, to the judicial proceedings had in the State of South Dakota by which the said Andrews was divorced from the defendant in error, Kate H. Andrews.

Second. Section forty-one of chapter one hundred and forty-six of the Public Statutes of Massachusetts, as applied to this case, is repugnant to the Constitution and laws of the United States, and the court upheld said statute.

ANNIE ANDREWS,
By JABEZ FOX,
Her Attorney.

97 COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *July* 18, 1900.

I certify the annexed to be a true copy of the opinion of the supreme judicial court in the case of Andrews *vs.* Andrews, decided on the 16th day of May, 1900.

GEO. F. TUCKER,
Reporter of Decisions.

98 HOLMES, *C. J.*:

This is an appeal from the decree of the probate court appointing Annie Andrews administratrix of the estate of Charles S. Andrews. The appellant is the first wife of the deceased. The appellee married him later in good faith after he had obtained a decree of divorce in South Dakota. The questions are whether the divorce is valid in this State or whether, if it is invalid, the appellant, on the ground of connivance and acquiescence, is estopped to deny its validity. Charles S. Andrews went to South Dakota for the purpose of getting the divorce, and intended to return to Massachusetts as soon as he had done so. Subject to this intention, it is found that he intended to become a resident of South Dakota for the purpose of getting a divorce, and to do all that was needful to make him such a resident. The statute of South Dakota forbids a divorce "unless the plaintiff has in good faith been a resident of the Territory ninety days next preceding the commencement of the action." Compiled Laws of Ter-

ritory of Dakota, § 2578; St. South Dakota 1890, c. 105, § 1. Andrews lived in South Dakota ninety days, and the Dakota court found in favor of its own jurisdiction, substantially in the words of the section just quoted, and granted the divorce for a cause which would not authorize a divorce by the laws of this Commonwealth.

The consensus of English-speaking courts founds jurisdiction of divorce on domicil. It may be that a State might substitute for domicil, by statute, if it chose, simply bodily presence within its borders for a certain number of days. It may be, at least under the Constitution of the United States, that a divorce granted under such a statute between parties, both of whom were before the court, would be entitled to respect here, notwithstanding Pub. Sts., c. 146, § 41. But compare People *v.* Dawell, 25 Mich., 247, 264; Dolphin *v.* Robins, 7 H. L. Cas., 390, 414. But no such question arises in this case, because the language of the South Dakota statute must be taken to require not merely bodily presence, but domicil. In the light of the decisions upon similar acts and the generally accepted rule making domicil the foundation, the words "resident of the Territory" mean domiciled in the Territory, whether they also mean personally present or not. Graham *v.* Graham, 81 N. W. Rep., 44; Dickinson *v.* Dickinson, 167 Mass., 474, 475; Reed *v.* Reed, 52 Mich., 117, 122; Leith *v.* Leith, 39 N. H., 20, 41; Van Fossen *v.* State, 37 Ohio St., 317, 319.

The finding of the single justice clearly means that the deceased did not get a domicil in South Dakota. He meant to stay there ninety days, and such further time, perhaps, as was necessary to get his divorce, and then he meant to come back to Massachusetts. It is true that he meant to do all that was needful to get a divorce, but he meant it because he was mistaken as to what was needful. In other words, he only meant to do what he supposed to be needful, and that was not enough. Whether if he had known what was needful he would have meant that and would have done it is a speculation. In fact, he did not mean or do it on the facts so far stated. It is clear that the finding of the South Dakota court in favor of its own jurisdiction upon an *ex parte* hearing would not be conclusive, but that the facts would be open to examination here. Adams *v.* Adams, 154 Mass., 290, 294, and cases cited; Hanover *v.* Turner, 14 Mass., 227, 230, 231; Thompson *v.* Whitman, 18 Wall., 457; Hoffman *v.* Hoffman, 46 N. Y., 30; Gregory *v.* Gregory, 78 Maine, 187; Watkins *v.* Watkins, 125 Ind., 163.

But the appellant appeared in the divorce suit and denied the alleged residence of the deceased, although afterwards, upon receiving a certain sum of money, she directed her counsel to withdraw. There is a plain difference between a case in which a respondent has not submitted herself to the power of the court and one in which she has done so. In the former a foreign State within whose territory she is domiciled may decline to allow her rights to be affected by the decree, whatever the record may allege. In the latter there is stronger ground for saying that if the libel alleges residence and any other facts necessary to give jurisdiction the libellee no more can dispute the validity of the decree on the ground that the court

was mistaken as to residence than she could upon the ground that it went wrong on the merits. Notwithstanding the language of some decisions which do not distinguish in terms between judgments where there has been no service and those where there has been no appearance—Sewall *v.* Sewall, 122 Mass., 156, 161—the decisions in some States where the question has been raised is in favor of the distinction. Kinnier *v.* Kinnier, 45 N. Y., 535, 540, 541; Cross *v.* Cross, 108 N. Y., 628, 630; Fairchild *v.* Fairchild, 54 N. J. Eq., 678; Waldo *v.* Waldo, 52 Mich., 94, 99; *In re* Ellis's Estate, 55 Minn., 401, 411; Van Fleet, Collateral Attack, § 648, § 389, p. 377. See Loud *v.* Loud, 129 Mass., 14, 18; Thompson *v.* Whitman, 18 Wall., 457; Bigelow, Estoppel (5th ed.), 296.

Supposing the State decisions just mentioned to be correct as to the effect of the decree between the parties, the general consequence would be that it was effective as to the rest of the world. As a general rule, it would be inconvenient to admit that parties who were divorced as between themselves were not divorced as against others. Kinnier *v.* Kinnier; Waldo *v.* Waldo, *ubi supra;* Adams *v.* Adams, 154 Mass., 290, 295. But a further distinction is taken. The world at large has no interest in the divorce, and therefore may be bound by it; but it is suggested that the State of the domicil has an interest, and that it cannot be concluded by a mere false recital in the record, because the foreign court did not even pretend to jurisdiction over that State. People *v.* Dawell, 25 Mich., 247, 257. In People *v.* Dawell this proposition was applied in favor of the State of the domicil as a prosecutor, and at an earlier date it was applied by this court in favor of the State as a legislator. Chase *v.* Chase, 6 Gray, 157, 161.

It will be borne in mind that on the facts before us the case is not one in which the legislature of South Dakota has undertaken to allow the grant of a divorce. It is one in which the court of that State has been deceived and in which it would have refused to act and would have had no right to act had it known the facts. In such a case as this the State of the domicil, if it sees fit, may decline to be bound by recitals in a record to which it is not a party. It may say, as Massachusetts has said by Pub. Sts., c. 146, § 41, that it will be governed by the fact, not by a possibly collusive record, and therefore that the fact must be ascertained, tried, and found here. Whether or not the statute goes farther than the law would go without it, we are of opinion, in accordance with the decision in Chase *v.* Chase, that, as applied to this case, it does not go beyond the constitutional powers of the State. In Hardy *v.* Smith, 136 Mass., 328, 331, it would seem from the papers in the case that there was an appearance for the respondent in the Utah court. The validity of the statute has been affirmed in a general way more than once—Sewall *v.* Sewall, 122 Mass., 156, 161; Smith *v.* Smith, 13 Gray, 209; Dickinson *v.* Dickinson, 167 Mass., 174—and confined, as it should be, to persons retaining their Massachusetts domicil—Clark *v.* Clark, 8 Cush., 385, 387—it seems to be mainly declaratory of the law—Lyon *v.* Lyon, 2 Gray, 367, 368—unless in cases like the present, where, perhaps, apart from it, the parties, both having appeared,

could not dispute the foreign adjudication of jurisdiction disclosed by the record. A further question might arise, as we have suggested, if the State granting the divorce had established a test of jurisdiction other than domicil; but that has not happened and is not likely to happen.

The Commonwealth having intervened by legislation, the appellant gets the benefit of it irrespective of any merits of her own. The possibility of a distinction such as was sanctioned by *In re* Ellis's Estate, 55 Minn., 401, upholding the divorce as between the parties, and so far as concerns property rights, but treating it as void as against the State, and for the purposes of the criminal law is done away with by the act. It is settled that in a case within the statute the divorce is to be treated here as void for all purposes. Chase *v.* Chase, 6 Gray, 157, 160. It is settled that there is no estoppel, even as against the party instituting the foreign proceedings. Smith *v.* Smith, 13 Gray, 209, 210. If the appellant's conduct amounted to connivance, as found, so that she could not have maintained a libel for adultery on the ground of the second marriage, that does not go far enough to constitute an estoppel. Loud *v.* Loud, 129 Mass., 14, 19. All that she did was to withdraw her active opposition to the divorce in consideration of a payment of money, and thereafter to remain silent. We are compelled to overrule the exceptions.

Exceptions overruled.

[Endorsed:] Andrews *vs.* Andrews. Certified copy of the opinion of the supreme judicial court.

99 *Citation on Writ of Error.*

Commonwealth of Massachusetts to Kate H. Andrews, of Boston, in the county of Suffolk, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States on the * fourth day of August next, pursuant to a writ of error filed in the clerk's office of the † supreme judicial court of the Commonwealth of Massachusetts, wherein Annie Andrews, of Brookline, in the county of Norfolk, in said Commonwealth, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Oliver Wendell Holmes, chief justice of the supreme judicial court of the Commonwealth of Massachusetts, this sixth day of July, in the year of our Lord one thousand nine hundred.

OLIVER WENDELL HOLMES.

---

* Not exceeding 30 days from the day of signing.

† Name of court to which writ of error is directed.

100 JULY 12, 1900.

Due service of the within citation is hereby acknowledged.

KATE H. ANDREWS,
By FRANK D. ALLEN,
Her Attorney of Record.

101 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Supreme Judicial Court.

I, John Noble, clerk of the supreme judicial court within and for the county of Suffolk, hereby certify that the foregoing are true copies of—

I. The record in the case of Annie Andrews, administratrix, appellee, *v.* Kate H. Andrews, appellant, from a decree of the probate court in said supreme judicial court determined and annexed to and transmitted with said record.

II. The assignment of errors.

III. The copy of the opinion of the full court and of all the proceedings in said case, with all things concerning the same, together with—

IV. The original citation.

V. The acceptance of service of the same.

In witness whereof I have hereunto set my hand and af-
102 fixed the seal of said court this eighteenth day of July, in the year of our Lord one thousand nine hundred.

[SEAL.] JOHN NOBLE, *Clerk.*

103 (*Bond on Writ of Error.*)

Know all men by these presents that we, Annie Andrews, of Brookline in the county of Norfolk and Commonwealth of Massachusetts, as principal, and Mary E. Paul, of said Brookline, as surety, are held and firmly bound unto Kate H. Andrews, of Boston, county of Suffolk and said Commonwealth, in the full and just sum of one thousand (1,000) dollars, to be paid to the said Kate H. Andrews, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the sixth day of July, in the year of our Lord one thousand nine hundred (1900).

Whereas lately, at a term of the supreme judicial court held at Boston, within and for the county of Suffolk and Commonwealth of Massachusetts, on the thirtieth day of June, A. D. 1900, in a suit depending in said court between said Kate H. Andrews and said Annie Andrews, a decree was rendered against the said Annie Andrews, and the said Annie Andrews having procured a writ of error and filed a copy thereof at the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the

said Kate H. Andrews, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington on the fourth day of August next:

Now, the condition of the above obligation is such that if the said Annie Andrews shall prosecute said writ of error to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

ANNIE ANDREWS. [L. S.]
MARY E. PAUL. [L. S.]

Signed, sealed, and delivered in presence of—
FREDERICK C. ALLEN.

Approved:
OLIVER WENDELL HOLMES,
Chief Justice S. J. C.

Copy.
Attest: JOHN NOBLE, *Clerk.*

Endorsed on cover: File No., 17,849. Massachusetts supreme judicial court. Term No., 364. Annie Andrews, plaintiff in error, vs. Kate H. Andrews. Filed July 28, 1900.